



**Kirui v Eurolab Services Limited; Kariuki t/a Moran Auctioneers
(Interested Party) (Miscellaneous Application E473 of 2023)
[2024] KEHC 3254 (KLR) (Commercial and Tax) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3254 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E473 OF 2023
FG MUGAMBI, J
MARCH 20, 2024**

BETWEEN

ALEXANDER KIPKOROS ARAP KIRUI APPLICANT

AND

EUROLAB SERVICES LIMITED RESPONDENT

AND

JOVAN H KARIUKI T/A MORAN AUCTIONEERS INTERESTED PARTY

RULING

1. By way of a Notice of Motion application dated 5th June 2023 the applicant sought orders that the lower court at the Environment and Land Court (ELC), that is CMELC E132/2022 Eurolab Services Ltd V Alexander Kirui be called before the High Court for perusal. He further sought injunctive orders restraining the respondents from interfering with his quiet possession of the suit premises and for orders that an impugned distress for rent staged at his premises be recalled and set aside pending the hearing and determination of this application and Preliminary Objection before the Trial Court.
2. The application is supported by the affidavit of Alexander Kipkoros Arap Kirui, the applicant, sworn on 5th June 2023. The applicant confirms that the dispute between the parties revolves around the validity of a land transaction. He further avers that the respondent had wrongfully filed CMELC E132/2022 at the Magistrate's Court in 2022 since the subject matter was beyond the Magistrate's pecuniary jurisdiction as set by the Magistrate's Act.
3. In response to the application the respondents filed a Notice of Preliminary Objection dated 18th July 2023, challenging the jurisdiction of this Honourable Court. Pursuant to the directions of this



Honourable Court the preliminary objection was canvassed by way of written submissions. The applicant's submissions are dated 18th August 2023 and the respondent's submissions are dated 16th September 2023.

Analysis

4. It is unfortunate that the applicant has tabled very scanty information relating to the lower court proceedings, in support of his application. Be that as it may, based on the facts as averred, this Court observes that the dispute between the parties relates to the validity of a land transaction and distress of rent which led to the filing of CMELC E132/2022 by the respondent.
5. The applicant seeks to have this Court call for the file in CMELC E132/2022 for perusal. The question is whether this Court has those powers. The locus classicus decision in *Owners of the Motor Vessel "Lillian S" V Caltex Oil (Kenya) Ltd*, [1989] KLR 1, remains sound law on the need for a Court to establish jurisdiction before proceeding in a matter. In addition, the respondent relies on section 4 of the *Rent Restriction Act* by dint of which appeals from the Rent Restriction Tribunal lie before the Environment and Land Court.
6. The applicant submits that the actual dispute between the parties relates to a dispute over the validity of a loan agreement which resulted to the illegal distress of his property. This appears to be the grounds on which the applicant believes that this Court should call for the file for perusal. It is not the role of this Court to determine the legal rights of parties at this point, but only to determine whether it has jurisdiction to grant the prayers sought.
7. In doing so, the starting point ought to be article 165 of the *Constitution*, which establishes the High Court and provides for its jurisdiction. By dint of article 165(5)(b) the High Court's jurisdiction does not extend to jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162 (2).
8. Turning to the *Environment and Land Court Act* which establishes the ELC as envisaged under Article 162(2) of the *Constitution*, section 4(2) provides that the Court is established as a superior court of record with the status of the High Court. Part III thereof provides for the jurisdiction of the Court, which includes appellate jurisdiction from the Magistrates Court in matters relating to environment and land. Section 13(4) further provides that the Court shall exercise appellate jurisdiction over the decisions of subordinate courts.
9. From these provisions, alongside article 165(6) of the *Constitution*, there is no doubt that the ELC, which has jurisdiction to hear appeals on environment and land matters and which has equal status to the High Court is the Court that is clothed with jurisdiction to supervise the Magistrates Court, pursuant to article 165(6).
10. For the avoidance of doubt article 165(6) provides that:

“the High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”
11. The prayers sought before this Court are therefore tantamount to asking this Court to exercise jurisdiction in environment and land matters by interrogating a matter that is before an ELC, albeit at the lower court. I am guided in this regard by the finding of this Court in *Patrick Musimba V National Land Commission & 4 Others*, [2015] eKLR.



12. The Court confirmed in that decision that by the amendments of 2012 to the ELC Act:

“Parliament took away the supervisory jurisdiction of the ELC over subordinate, judicial and quasi-judicial tribunals under Article 165(6) and also the jurisdiction to determine matters of a constitutional nature involving environment and land generally.

We however hasten to add that the jurisdiction of the ELC is founded not just under Section 13 of the ELC Act but also under Article 162 (2) of the Constitution and Section 150 of the Land Act No. 6 of 2012 which vests exclusive jurisdiction upon the ELC Court to hear and determine disputes, actions and proceedings concerning land under the Land Act. The ELC’s jurisdiction is certainly not donated through Article 165.”

13. Based on the above finding and the generous interpretation that Courts have given to the intention of the establishment of the ELC as a court of superior status akin to the High Court, it is my conclusion that the appropriate Court to hold supervisory jurisdiction over matters within the ELC Magistrates Court is indeed the ELC. This supervisory authority, as envisioned under Article 165 (6) of the Constitution, is accessible to the ELC similarly as it is to the High Court.

14. For this court to assume such jurisdiction would, in my opinion, contravene the Constitution and the specific jurisdiction donated to the ELC. The Constitution serves as the foundational law overriding all statutory legislation, as explicitly stated in Article 2.

15. Exercising such jurisdiction could also complicate administrative processes and cause delays in delivering justice, which contradicts the principle of Article 159 of the Constitution that advocates for efficiency, speed, and convenience in judicial proceedings. It is imperative that Parliament revisit and reassess this legislative provision in consideration of these factors and the judicial pronouncements by various Courts.

Determination

16. In conclusion, the preliminary objection is upheld and consequently the application dated 5th June 2023 is dismissed with costs to the applicants.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 20TH DAY OF MARCH 2024.

F. MUGAMBI

JUDGE

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