



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT OF KENYA
AT MALINDI
JUDICIAL REVIEW MISCELLANEOUS APPLICATION NO. 7 OF 2013

**IN THE MATTER OF: AN APPLICATION BROUGHT PURSUANT TO
ORDER 53**

OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF: AN APPLICATION BY C.J. HAROON

AND KAREN ANDERSON FOR HTE JUDICIAL

**REVIEW ORDER OF PROHIBITION AGAINST THE MALINDI
PRINCIPAL MAGISTRATE'S COURT**

AND

**IN THE MATTER OF: AN APPLICATION BY UCHUMI
SERVICES LIMITED**

FOR AN EVICTION ORDER IN MALINDI PMCCC

**MISCELLANEOUS CIVIL APPLICATION NO.5 OF 2013 UCHUMI
SERVICES**

LIMITED VERSUS C.J. HAROON & SONJA KAREN ANDERSON

AND

**IN THE MATTER OF: THE JURISDICTION OF THE
ENVIRONMENT AND LAND COURT PURSUANT**

TO ARTICLE 162(2) (B) OF HTE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF: THE PWOERS OF THE
ENVIRONMENT AND LAND COURT AS CONFERRED**

**BY SECTION 30 OF HTE ENVIRONMENT AND LAND COURT
ACT NO. 19 OF 2011**

AND

**IN THE MATTER OF: SECTION 8 OF THE LAW REFORM
ACT CHAPTER 22 LAWS OF KENYA**

BETWEEN

CJ HAROON AND SONJA KAREN T/A

MANFRIDAYS MIDA COVE.....APPLICANT

= VERSUS=

THE PRINCIPAL MAGISTRATE'S COURT AT MALINDI.....RESPONDENT

UCHUMI SERVICES LIMITED.....INTERESTED PARTY

R U L I N G

Introduction

1. What is before me is the Ex-parte Applicants' Notice of Motion dated 21st June 2013. In the said Motion, the Ex-parte Applicants are seeking for the following orders:

(a) THAT a Prohibitory directed against the Respondent herein from tin any further proceedings to hear or to entertain any prayer of Eviction or issue any order rendering the eviction of the ex-parte Applicants or in any way affecting the ex-parte Applicants use and occupation of Portion of Land known as Kilifi/Madeteni/536 do issue

(b) That costs be provided for.

2. The Motion is premised on the grounds that while the Interested Party owns the suit property, the Ex-parte Applicants own every singular investment and development thereon valued at approximately Kshs.60,000,000; that the Interested Party has taken out proceedings in the Principal Magistrate's Court Misc Civil Application Number 5 of 2013 seeking for an order of eviction against the Ex-parte Applicant from the suit property arising out of contested rent arrears and that the Respondent's court is usurping the powers and jurisdiction of the Environment and Land Court.

The Ex Parte Applicant's case

3. According to the Supporting Affidavit of the 1st Ex-parte Applicant, the Ex parte Applicants have deponed that they have developed a hotel resort on land known as Kilifi/Madeteni/536 which is registered in the name of the Interested Party. The said Resort, it was deponed, is valued at over Kshs.60,000,000.
4. On 17th August 2012, the Business Premises Rent Tribunal granted to the Interested Party liberty to distrain for rent arrears, which decision the Ex-Parte Applicants were aggrieved with. They

- subsequently filed an Application for stay of execution pending appeal.
5. The Ex-parte Applicants have further deponed that the Interested Party has now sought to have the Tribunal award adopted by the Magistrate's Court; that the Interested Party can only evict them upon filing relevant proceedings in the Environment and Land Court; that the Interested Party's title to the suit property is entirely defective and that the Interested Party wants to cripple them by taking away their developments.
 6. The Ex-parte Applicants finally deponed that the jurisdiction to issue eviction orders solely lie with this court and not the Magistrate's court.

Interested Party's case

7. Mr. Tukero Ole Kina, the Interested Party's Advocate swore a Replying Affidavit on 29th August 2013 and deponed that the Ex-parte Applicants received a statutory notice requiring them to hand over possession of the premises in dispute for the reasons stated in the notice.
8. The Ex-parte Applicants thereafter filed a reference before the Tribunal which considered the issues before it and delivered its judgment.
9. The Ex-parte Applicants were dissatisfied with the decision of the Tribunal and sought for an order of stay pending appeal. The Interested Party's advocate has deponed that the Ex-parte Applicants failed to honour the terms that were given by the appellate court and that Hon. Liza Gicheha is a Senior Principal Magistrate; that she has the requisite jurisdiction to the Application before her pursuant to the provisions of section 14 of the Landlord and Tenant (Shop, Hotels and Catering Establishments) Act Cap 301.
10. The parties agreed to dispose of the Application by way of written submissions. I have considered the submissions and authorities that have been filed in this matter.

Analysis and findings

11. It is not in dispute that the Ex-parte Applicants filed a dispute at the Mombasa Business Premises Rent Tribunal; Tribunal case number 105/2012. The said dispute was filed after the Interested Party, as the landlord, issued to the Ex-parte Applicant's a notice to terminate the tenancy on the grounds that the tenant had failed to pay rent.
12. The dispute was heard by the Tribunal which ordered the Ex-Parte Applicants to pay to the Interested Party all the outstanding rent arrears on or before 30th September 2012. The Ex-parte Applicants were to continue paying rent on the 5th of every month and in default, the Interested Party was at liberty to levy distress.
13. Dissatisfied with the Ruling of the Tribunal, the Ex-parte Applicants filed a Miscellaneous Application in the High Court seeking for a stay of execution of the Judgment of the Tribunal pending the hearing and determination of the Appeal.
14. Meoli J heard the Application and on 7th December 2012 granted the Ex-parte Applicants a stay of execution of the Judgment of the Tribunal on condition that the Ex-parte Applicants do deposit Kshs.600,000 into an interest earning account in the joint names of the parties within 14 days and to continue paying rent to the Interested Party at the rate of Kshs.50,000 on or before the 5th day of every month during the pendency of the appeal.
15. It is not clear whether the said appeal was ever filed. It is also not clear whether the conditions that were set by the High Court were complied with by the Ex-parte Applicants.
16. The Interested Party has now moved the subordinate court to have the Judgment of the Tribunal enforced by having the Ex-parte Applicants evicted from the suit property. The Application by the Interested Party in the subordinate court for eviction was filed pursuant to the provisions of section 14 of the Landlord and Tenants (Shop, Hotels and Catering Establishments) Act.
17. The Ex-parte Applicants' case, as I understand it, is that in view of the provisions of section 30 of the Environment and Land Court Act, it is only the Environment and Land Court that can issue the order of eviction and not the Magistrate's Court; that the award by the Tribunal did not prescribe the eviction of the Ex-parte Applicants and that the Magistrate's court is usurping the powers of this court.

Jurisdiction

18. The issue that I am required to determine at this stage is whether the subordinate courts have jurisdiction to enforce the orders of the Business Premises Rent Tribunal in view of the establishment of the Environment and Land Court.
19. I cannot, as the Ex-parte Applicants have argued separately, determine whether indeed the Interested Party is a landlord or not or whether the Judgment by the Tribunal provided for the eviction of the Ex-parte Applicant or not. Those, in my view, are issues that will be ventilated when the appeal against the Judgment of the Tribunal is argued, if at all.
20. Section 14 of the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, Cap 301 provides that the orders of the Business Rent Tribunal are supposed to be enforced as the decree of the court by a competent subordinate court of the first class.
21. The Application that is being challenged by the Ex-parte Applicants was filed in a subordinate court of the first class. That Application is seeking the adoption of the Judgment of the Tribunal as the decree of the court and the enforcement thereof. On whether the prayers in the said Application have been framed correctly or not, that can only be argued in the trial court.
22. It is true, as argued by the Ex-parte Applicants that pursuant to Article 162(2)(b) of the Constitution and Section 30 of the Environment and Land Court Act, all proceedings relating to the environment or to the use and occupation and title to land are supposed to be heard by the Environment and Land Court.
23. However, these provisions are supposed to be read together with the provisions of section 13(5) of the Environment and Land Court Act, Section 11 of the Civil Procedure Act and the Chief Justices' Practice Directions of 9th November 2012.
24. Section 13(5) of the Environment and Land Act provides that the Environment and Land Act shall have supervisory jurisdiction over the subordinate courts, local tribunals, persons or authorities in accordance with Article 165(6) of the Constitution. Section 11 of the Civil Procedure Act, on the other hand, provides that every suit shall be instituted in the court of the lowest grade competent to try it.
25. The Environment and Land Court Act did not repeal the Landlord and Tenants (Shop, Hotels and Catering Establishments) Act. Consequently, the Tribunal established under the Act has the jurisdiction to determine issues relating to the protection of tenants as per the preamble of the Act. This court can only then deal with the appeals that emanates from the Tribunal.
26. This legal position was clarified in the Practice Directions by the Chief Justice published in Gazette Notice No.16268 of 9th November 2012 in the following terms:

“All cases under the Landlord and Tenants (Shops Hotels, Catering Establishments) Act shall continue to be filed in and determined by the Business Premises Tribunal”.
27. These Practice Directions were issued by the Chief Justice pursuant to the powers conferred on him by Section 22 of the Sixth Schedule of the Constitution and Section 30 of the Environment and Land Court Act. Landlord and Tenants (Shop, Hotels and Catering Establishments) Act. The subordinate court of first class has the jurisdiction to deal with Applications under section 14 of the Landlord and Tenants (Shop, Hotels and Catering Establishments) Act.
28. In the circumstances and for the reasons I have given above, I dismiss the Ex-parte Applicants' Notice of Motion dated 21st June 2013 with costs.

Dated and Delivered in Malindi this **20th** Day of **December**, 2013

O. A. Angote

Judge