



**Maworks Investment Company Limited v Mwilitisa (Civil Appeal
E686 of 2022) [2024] KEHC 10525 (KLR) (3 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 10525 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL APPEAL E686 OF 2022

WM MUSYOKA, J

SEPTEMBER 3, 2024

BETWEEN

MAWORKS INVESTMENT COMPANY LIMITED APPELLANT

AND

ALBERT MWILITSA RESPONDENT

(An appeal arising from the judgment of Hon. Brenda Jaluba Ofisi, Senior Resident Magistrate, SRM, Adjudicator, delivered on 29th July 2022, in Nairobi SCC Com. No. E2723 of 2022)

JUDGMENT

1. The suit, at the primary court, was initiated by the respondent, against the appellant, for a sum of Kshs. 180,000.00, being, allegedly, a deposit made by the respondent, to the appellant, for hotel space, which was immediately closed, in compliance with Government directives, in the effort to combat the Covid-19 pandemic. The appellant filed a response, in which it pleaded that the money was indeed paid, as part deposit and part rent, on the basis of a lease agreement, whereupon the respondent took possession, and commenced the business of a restaurant, which he subsequently terminated without notice to the appellant. It was denied that the arrangement was frustrated by the Government efforts towards containment of the Covid-19 pandemic. It was averred that part of the money was spent as rent for part of the period that the respondent was in occupation, and the rest, the deposit component, covered the rent for the remainder of the period, for which rent had not been paid.
2. A formal hearing was conducted, on 4th July 2022, where 2 witnesses testified, 1 each for the appellant and the respondent. Judgment was delivered on 29th July 2022. The claim was partially allowed, so that ½ of the money deposited was ordered to be reimbursed, on the basis that it was a component of the deposit on rent.
3. The appellants were aggrieved, hence the instant appeal. The grounds, in the memorandum of appeal, dated 25th August 2022, revolve around the trial court concluding that the respondent did not move



- out of the let premises, when the evidence on record was to the contrary; the trial court concluding that the appellant terminated the lease without notice, when it was the respondent who voluntarily moved out of the premises; and the trial court allowing the claim, when it was not supported by evidence.
4. Directions, on the disposal of the appeal, were given, on 20th December 2023. I see written submissions on the file, by the appellant, but I have not found any by the respondent.
 5. The appellant has argued the appeal from 2 standpoints, the first on jurisdiction and the second on misapplication of the law to the facts by the trial court. On jurisdiction, it cites the decision in [*Christoffersen vs. Kavneet Kaur Sebmi t/a The Random Shop Nairobi HCCA No. E036 of 2022*](#), reported as [*Christoffersen vs. Kavneet Kaur Sebmi t/a The Random Shop*](#) [2022] KEHC 14035 (KLR) (Majanja, J), where it was found and held that the Small Claims Court lacked jurisdiction to hear and determine a landlord-tenant dispute over rent arrears. On the second aspect, it is submitted that the conclusion, that the respondent closed the restaurant business, but did not move out of the premises, was not supported by the evidence adduced.
 6. The primary issue for determination is jurisdiction of the trial court, whether the trial court properly analysed the evidence is secondary.
 7. Jurisdiction is at the core of any litigation. See *Adero Adero & another vs. Ulinzi Sacco Limited* [2002] eKLR (Ringera, J) and [*Joseph Njuguna Mwaura & 2 others vs. Republic*](#) [2013] eKLR (Mwera, Warsame, Kiage, Gatembu & J. Mohammed, JJA). A court or tribunal can only entertain matters that fall within its jurisdiction, which is conferred by the law, that is [*the Constitution*](#) and statute. See *In the Matter of Interim Independent Electoral Commission* [2011] eKLR (Mutunga CJ, Baraza DCJ, Tunoi, Ibrahim, Ojwang, Wanjala & Ndung'u, SCJJ) and [*Kibos Distillers Limited vs. Benson Ambuti Adega & 3 others*](#) [2020] eKLR (Makhandia, Kiage & Odek, JJA). It cannot be conferred by judicial craft, in terms of the court arrogating to itself jurisdiction, where [*the Constitution*](#) and the statute have not so vested it, or by consent of the parties. See [*Samuel Kamau Macharia & another vs. Kenya Commercial Bank Limited & 2 others*](#) [2012] eKLR (Mutunga CJ, Tunoi, Ojwang, Wanjala & Ndung'u, SCJJ) and [*Equity Bank Limited vs. Bruce Mutie Mutuku t/a Diani Tour Travel*](#) [2016] eKLR (Makhandia, Ouko & M'Inoti, JJA). Where a court finds itself bereft of jurisdiction, over a matter that it is seized of, it should down its tools, for it ought not take any further step in the matter, for the very reason of lack of jurisdiction. See [*Owners of the Motor Vessel "Lillian S" vs. Caltex Oil \(Kenya\) Ltd*](#) [1989] eKLR (Nyarangi, Masime & Kwach, JJA).
 8. Since jurisdiction goes to the core or heart, or is at the centre, of the matter, issues around it can be raised and determined at any stage of the proceedings, and in any manner. See [*Kenya Ports Authority vs. Modern Holdings \(EA\) Limited*](#) [2017] eKLR (Makhandia, Ouko & M'Inoti, JJA). It can be raised in the pleadings, or during trial, or by way of preliminary objection on a point of law, or through an application, whether orally or in writing. It can be raised by either party or by the court on its own motion. The court can address it in its judgment, at the tail-end of the trial, regardless of whether any of the parties had raised it, whether in their pleadings or in the course of the trial. It does not have to be raised as, or made, an issue at the trial, for the court to consider it. It is so central to the validity, authenticity and competence of the proceedings that the court can entertain and determine it at any stage of the proceedings. Because of its centrality, it can be prioritised, and disposed of as a preliminary issue, after stopping the proceedings temporarily to address it. See [*Owners and Masters of the Motor Vessel "Jovev" vs. Owners and Masters of the Motor Tugs "Barbara" and "Steve B"*](#) [2008] 1 EA 367. Where it is established that the trial court is bereft of jurisdiction, the proceedings ought to be halted, regardless of the stage at which they are at. See [*Owners of the Motor Vessel "Lillian S" vs. Caltex Oil \(Kenya\) Ltd*](#) [1989] eKLR (Nyarangi, Masime & Kwach, JJA).



9. The principal issue is about jurisdiction of the Small Claims Court, where the claim at the trial court was initiated. The statute which vests the Small Claims Court with jurisdiction is the [*Small Claims Court Act*](#), Cap 10A, Laws of Kenya. That vesting is through section 12 of the [*Small Claims Court Act*](#), which confers jurisdiction on that court to determine civil claims relating to contracts for sale, supply of goods and services, and money held and received; liability in tort in respect of loss or damage caused to any property, or for delivery, or recovery of moveable property; compensation for personal injuries; and set off and counterclaim under any contract. The claim by the respondent was for money held and received.
10. The trial court took evidence, and it would appear that the issue of jurisdiction was not raised by either party, neither did the trial court consider it, in its judgment.
11. Was there jurisdiction on the part of the trial court? According to the statement of claim, the cause was about recovery of rent deposited, for hotel space, which hotel was, allegedly, immediately closed on account of Government Covid-19 containment measures. It was not about a hotel really, but a restaurant, or eatery, or catering establishment. The appellant, in his response, did not contest, receipt of the money, which he said in part covered rent and part deposit on rent. The appellant also averred that the respondent took possession, operated a restaurant business on the premises, before moving out, after expressing an intent to. According to the appellant, the parties had entered into a lease agreement, on 8th January 2021, and the respondent expressed an intention to stop operations on 29th March 2021. At the oral hearing, the respondent testified that the appellant was his landlord, and that he was seeking refund of the money pleaded in his claim. He said that he was unable to conduct business, as from 6th January 2021, on account of the Covid-19 pandemic. He denied ever moving into the premises. He, however, clarified that the appellant did not prevent him from accessing the same. He stated that notice, to terminate tenancy, was a prerequisite, under the lease/tenancy agreement, but he did not give one. The witness for the appellant stated that the appellant did not ask the respondent to vacate, but that he had received an intimation indicating that the respondent wished to vacate. In the judgment, the trial court acknowledged the tenancy agreement, and went on to conclude that the appellant was entitled to retain half of the money received as rent, but the other half ought to be treated as deposit on rent, which was refundable.
12. The dispute before the trial court was purely within the realm of a landlord-tenant relationship. That relationship is governed by its own law, and disputes around it, inclusive of any on rent, should be resolved in accordance with the landlord-tenant law. In short, the landlord-tenant relationship is a specialised area, governed by its own law, specific to that sector. There are laws and statutes that govern it, which set out processes for resolving any disputes in that space. It is a land law issue, governed by legislation relating to land, such as the [*Land Registration Act*](#), Cap 300, Laws of Kenya, and the [*Land Act*](#), Cap 280, Laws of Kenya, which deal with the rights and obligations of parties to a lease agreement. The courts, with jurisdiction to deal with disputes within that realm, are the Environment and Land Court and any enabled subordinate courts, by virtue of sections 2 and 101 of the [*Land Registration Act*](#) and sections 2 and 150 of the [*Land Act*](#). For lease or tenancy agreements relating to certain premises, occupied for residential or commercial purposes, special tribunals have been established under the [*Rent Restriction Act*](#), Cap 296, Laws of Kenya, and the [*Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act*](#), Cap 301, Laws of Kenya, being the Rent Restriction Tribunal and the Business Premises Tribunal, respectively. Appeals, from the tribunals envisaged under the [*Rent Restriction Act*](#) and the [*Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act*](#), lie with the Environment and Land Court, by virtue of section 8 of the [*Rent Restriction Act*](#) and section 15 of the [*Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act*](#). Quite clearly, from the above discussion, jurisdiction over disputes between landlords and tenants, relating to rent, is vested



in the courts specified in the [Land Registration Act](#) and the [Land Act](#), and the specialised tribunals established under the [Rent Restriction Act](#) and the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#).

13. The Small Claims Court is vested with jurisdiction over small claims. Its jurisdiction is defined in section 12 of the [Small Claims Court Act](#), as covering contracts for sale and supply of goods or services, and relating to money held and received; set-off and counterclaim under any contract; compensation for personal injuries; and liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property. The [Small Claims Court Act](#), and in particular its section 12, is not to be read in isolation of other laws or legislation. Indeed, section 12(1) is specific, that the jurisdiction conferred under it, is subject to “any other law.” So, it ought to be read together with the provisions in the [Land Registration Act](#), the [Land Act](#), the [Rent Restriction Act](#) and the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#), with respect to claims touching on rent. Section 12 of the Small Claims Act does not override the provisions in those other statutes, on landlord-tenant disputes, and it does not oust the jurisdictions conferred on the specialised courts and tribunals, over such disputes, in those statutes. Section 12 of the [Small Claims Court Act](#) should give way to the provisions in those other statutes.

14. For avoidance of doubt, section 12(1) of the [Small Claims Court Act](#) says:

“Nature of claims and pecuniary jurisdiction

(1) Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—

- (a) a contract for sale and supply of goods or services;
- (b) a contract relating to money held and received;
- (c) liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;
- (d) compensation for personal injuries; and
- (e) set-off and counterclaim under any contract.

(2) ...”

15. It would appear, from the wording or language of section 12(1) of the [Small Claims Court Act](#), that the Small Claims Court is not designed to handle disputes relating to land and land related-issues. For example, the disputes around contracts, that it is designed to handle, relate to sale of goods and services, not land. Liability, relating to recovery of property, is limited to movable, and not immovable, property. The construction, that should be given to section 12(1) of the [Small Claims Court Act](#), therefore, ought to be that that court is not meant to handle disputes that have anything to do with or relate to land, so long as such disputes are subject to jurisdiction of specialised courts and tribunals, established under dedicated legislation, relating to land and related matters. See [Palms Resort Limited vs. Qureshi & 2 others](#) [2023] KEHC 23644 (KLR) (Magare, J).

16. It is my finding and holding that the trial court did not have jurisdiction to handle the dispute that was before it, for the same fell within the jurisdiction of the specialised courts and tribunals envisaged in the [Land Registration Act](#), the [Land Act](#), the [Rent Restriction Act](#) and the [Landlord and Tenant \(Shops, Hotels and Catering Establishments\) Act](#). From the pleadings, it would be clear that the parties raised issues about taking of possession or occupation of rented premises, payment of rent and deposit on



rent, issuance of notice to terminate tenancy, and payment of an amount equivalent to monthly rent in lieu, among others, all of which are issues that are peculiarly within the jurisdiction of the specialised courts and tribunals envisaged under the Land Registration Act, the Land Act, the Rent Restriction Act and the Landlord and Tenant (Shops, Hotels and Catering Establishments) Act, and not the court established under the Small Claims Court Act.

17. In Christoffersen vs. Kavneet Kaur Sehmi t/a The Random Shop [2022] KEHC 14035 (KLR)(Majanja, J), the issue of the jurisdiction of the High Court, with respect to handling appeals from the Small Claims Court, which turn on rent, arose, and the court ruled that under the Small Claims Court Act, it was the High Court with jurisdiction to handle appeals from the Small Claims Court. In any case, the court went on, the claim was for money held and received, being rent arrears, but there was no jurisdiction in the Small Claims Court, for the tenant held no money, as she was in arrears. That then meant that the High Court decided the matter on the basis of jurisdiction, rather than the merits, turning around whether the tenant was in rent arrears. Likewise, the appellant herein has addressed the matter of jurisdiction of the High Court over this appeal, given that it is about rent. Obviously, where the issue, to be addressed on appeal, would turn on matters uniquely land, like rental income from landed assets, there would be no jurisdiction. If I were to determine the appeal on merits, in terms of assessing whether the facts disclosed a landlord-tenant relationship, the validity of any lease or tenancy agreement the basis of that landlord-tenancy relationship, whether a proper termination notice was given, how funds deposited as rent were to be applied, among others, I would be acting outside of jurisdiction. Of course, the matter at the trial court turned on those issues, and any challenge to the decision of that, based on those facts, on appeal, ought to be placed before the Environment and Land Court. I have only dealt with jurisdiction, and, I believe, there would be jurisdiction for me to do so.
18. As I have concluded that the trial court had no jurisdiction over the matter, it should then follow that there was no basis for it to take evidence, and the exercise that it undertook, of receiving evidence, and analysing it, was needless. There would be no foundation for me, similarly, to evaluate whether the analysis undertaken was reasonable, or accorded with the law. In any event, an analysis of that evidence would take me outside of jurisdiction, into a realm that falls within the mandate of another court, which the Constitution has forbidden me, sitting as the High Court, from venturing into.
19. In view of everything said above, I will allow the appeal, not on the grounds detailed in the memorandum of appeal, but on account of lack of jurisdiction, on the part of the trial court. The effect, of allowing the appeal, is that the final order, made in the judgment of 29th July 2022, is hereby set-aside, and substituted with an order striking out the claim at the trial court. I shall make no order on costs. It is so ordered.

DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 3RD DAY OF SEPTEMBER 2024.

W MUSYOKA

JUDGE

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Simiyu, instructed by SIM Advocates LLP, Advocates for the appellant.

Mr. Khalwale, instructed by Khalwale & Company, Advocates for the respondent.

