



**Ethics and Anti Corruption Commission v Olando & 2 others (Environment and Land Miscellaneous Application E018 of 2022) [2023] KEELC 18152 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18152 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E018 OF 2022  
DO OHUNGO, J  
JUNE 21, 2023**

**BETWEEN**

**ETHICS AND ANTI CORRUPTION COMMISSION ..... APPLICANT**

**AND**

**PAUL POLLAND OLANDO ..... 1<sup>ST</sup> RESPONDENT**

**EDITH SANDA LUMIRE ..... 2<sup>ND</sup> RESPONDENT**

**ZABLON AGWATA MABE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By notice of motion dated May 19, 2022, the applicant seeks the following orders:
  - a. That this Honourable Court be pleased to transfer the Court file Kakamega MCELC Number 177 of 2019 being a matter between EACC -vs Paul Olando which is before the Lower court, Senior Principal Magistrate Court in Kakamega to the Environment and Land Court at the High Court in Kakamega for hearing and final determination.
  - b. That the file in respect of Kakamega MCELC No. 177/2019 be designated before this Honourable court for purpose of determination of the entire suit.
2. The application is supported by an affidavit sworn by Ruth Ayunga, an advocate of the High Court of Kenya having conduct of the matter on behalf of the plaintiff/applicant. She deposed that the applicant filed the suit sought to be transferred on 23<sup>rd</sup> November 2019 in the Chief Magistrate's Court at Kakamega, which court had jurisdiction to hear and determine the suit. That the suit was filed after investigations established that the parcel of land known as Kakamega/Municipality Block 3/230 (suit property) belonged to the Government of Kenya through the State Department of Housing designated as Government House No. KAK/HOU/HG8 and KAK/HOU/MGA 20A & B within Kakamega Municipality for use as dwelling house for public servants. That during pendency of the suit, the



- applicant subjected the suit property to valuation and received a valuation report which indicates the value of the suit property as KShs 30,000,000. She added that the applicant is desirous of having the suit heard and determined in this court since the lower court now lacks pecuniary jurisdiction.
3. The respondents opposed the application through replying affidavits sworn by Frankline Isaiah Omino advocate and Edith Sandera Lumire. Additionally, the respondents filed grounds of opposition and even notice of preliminary objection. The gist of the affidavits, the grounds of opposition and the notice of preliminary objection is that the suit was filed in a court without jurisdiction and that it cannot therefore be transferred to this court. The respondents also strenuously opposed the claim that the suit property is government land.
  4. The application was canvassed through written submissions which both sides duly filed. I have considered the application, the affidavits, the grounds of opposition, the notice of preliminary objection and the submissions. The issues that arise for determination are whether this court has jurisdiction to grant the orders sought and whether the orders sought should issue.
  5. The question of whether this court has jurisdiction is tied to whether the subordinate court had jurisdiction when the suit was filed. The applicant has contended that the subordinate court had pecuniary jurisdiction when it filed the suit and that a subsequent valuation report put the value of the suit property at KShs 30,000,000 which is beyond pecuniary jurisdiction of the subordinate court. The respondents contend that in fact, the suit property is valued at KShs 33,000,000.
  6. I note that the suit before the subordinate court concerns title to land. Thus, determination of whether the subordinate court had jurisdiction at the point of institution of the suit depends on the value of the suit property as at the date of filing of the suit in 2019. The valuation reports that the parties are referring to are dated 2020. Value of land is not static. It may appreciate or even depreciate, depending on a variety of factors. Nothing has been availed to show that the suit property had a value beyond KShs 20,000,000, which is the maximum pecuniary jurisdiction of the subordinate court, as of the date of filing of the suit. To that extent, I am persuaded that this court has jurisdiction to grant the orders sought.
  7. Ultimately, the dispute that must be resolved by the court is whether the title to the suit property is valid. In the meantime, the parties agree that notwithstanding whether the Subordinate Court had pecuniary jurisdiction as of the date of filing of the suit, the Subordinate Court does not have pecuniary jurisdiction now. It is thus necessary and appropriate that the hearing and determination of the suit be undertaken before a court that has jurisdiction. Indeed, that is in line with the overriding objective of litigation, which is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes. Courts are now required to give the overriding objective the pride of place and to remember that the said objective overshadows all technicalities, precedents, rules and actions which are in conflict with it and that whatever is in conflict with it must give way. See *PN Masbru Ltd v Ojenge* (Civil Appeal 64 of 2020) [2023] KECA 473 (KLR) (28 April 2023) (Judgment).
  8. In view of the foregoing, I find merit in notice of motion dated May 19, 2022. I make the following orders:
    - a. Kakamega MCELC Number 177 of 2019 EACC -vs- Paul Olando is hereby withdrawn from the Subordinate Court and is transferred to this court for hearing and determination.
    - b. Costs of Notice of Motion dated May 19, 2022 shall be in the transferred suit.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 21<sup>ST</sup> DAY OF JUNE 2023.**

**D. O. OHUNGO**



## **JUDGE**

Delivered in open court in the presence of:

Mr Bii holding brief for Ms Ayunga for the applicant

No appearance for the respondents

Court Assistant: E. Juma

