



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**MISC CIVIL APPLICATION NO. 12 OF 2020**

**LERIANKO OLE SOIT ALIAS JOSEPH LELIONKA SOIT.....1<sup>ST</sup> APPLICANT**

**DAVID KONCHELLAH ALIAS DEBARA ROSOROSO.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**KAKUI NAWANKAS.....RESPONDENT**

**RULING**

**The case for the applicants**

1). Pursuant to the provisions of sections 18 (1) b. (2), sections 3A, 1A and 1B of the Civil Procedure Act, Order 51 Rule (1) of the Civil Procedure Rules and all other enabling provisions of the law; the applicants have sought the following orders from this court.

*1. spent*

*2. An order to withdraw suit No. Kilgoris PMCC No. 42 of 2019 formerly Narok ELC 555 of 2017, Kakui Nawankas versus Lorianko Ole Soit & David Konchellah from the Principal Magistrate's Court at Kilgoris and transfer it to Narok Environment and Land Court for hearing and determination*

*3. An order to fix for hearing the application dated 21<sup>st</sup> August 2017*

*4. an order to grant stay of execution of the orders granted by Hon. Robert Oanda, PM, in Kilgoris PMCC No. 42 of 2019, pending the hearing and determination of his application.*

*5. An order to make provision for costs.*

2). The application is supported by 13 grounds that are set out on the face of the notice of motion, with the major grounds being the following. First, the respondent filed a case No. Kisii HCCC No. 61 of 2009 against the applicants in which he sought eviction orders from the suit land, whose adjudication process and identification had not been concluded. Second, case No. Kisii HCCC No. 61 of 2009 was heard *ex parte* and judgement delivered by Hon. Lady Justice Jane Onyango, who is an ELC judge

3.) Third, after the judgement was delivered, in case No. Kisii HCCC No. 61 of 2009, the case was transferred to the Environment and Land Court at Narok, being ELC case No. 555 of 2017. The ELC court (Mohamed Kullow, J) at Narok transferred it to the magistrate's court at Kilgoris being Kilgoris PMCC No. 42 of 2019 for hearing and determination. The presiding magistrate (Hon. Oanda) in Kilgoris PMCC No. 42 of 2019, cannot set aside the *ex parte* judgement entered by the High Court in Kisii HCCC No. 61 of 2009. Furthermore, the suit property is worth over Shs 20,000,000/-, which is beyond the monetary jurisdiction of the said magistrate.

4.) In their supporting affidavit, the applicants have replicated the same matters that appear on the face of the notice of motion, which I need not reproduce herein.

**The case for respondent**

5.) The respondent in his 18 paragraphs replying affidavit has opposed the application. In that replying affidavit the respondent has deposed to the following major averments. He has averred that judgement in this matter was delivered by Judge Jane Onyango, an ELC Judge on 24<sup>th</sup> May 2017 in the presence of the applicants. The said judgement declared the respondent the rightful owner of land parcel No. Transmara/Olalui/294 and issued a permanent injunction restraining the applicants from entering the suit land in the High Court at Kisii, Civil Suit No. 61 of 2009, *Kakui Nawankas v Joseph Lelionka Soit alias Lelionko Ole Soit & Another*. He also has deposed that this matter

was transferred by a court of competent jurisdiction (Mohamed Kullow, J). The applicants ought to have made the application before that court to review its order, while sitting as an ELC court at Narok.

6.) In addition to the replying affidavit, the respondent has filed a preliminary objection for the following reasons. First, the instant court lacks jurisdiction to hear and determine this matter by virtue of the provisions of sections 13 of the Environment and Land Court Act. The provisions of this section vest the settlement of land disputes in the ELC Court. Second, the matter is *res judicata* by virtue of the provisions of section 7 of the Civil Procedure Act, as a similar application dated 13<sup>th</sup> July 2020 was dismissed on 21<sup>st</sup> September 2020.

**Issues for determination**

7.) I have considered the preliminary objection raised by the respondent.

8.) I have also considered his replying affidavit.

9.) Furthermore, I have considered the applicants' grounds in support of their notice of motion and their supporting affidavit.

As a result, I find that the suit was transferred by Mohamed Kullow, J to the magistrate's court at Kilgoris, which now is Kilgoris PMCC No. 42 of 2019, for hearing and determination.

10.) I find that this matter is in the exclusive jurisdiction of the Environment and Land Court by virtue of section 13 of the Environment and Land Court Act.

11.) It therefore follows that this court lacks jurisdiction to entertain and determine this application. And by virtue of section 18 of the Civil Procedure Act, I hereby transfer this application to the Environment and Land Court for hearing and determination. Even in the absence of these provisions this court would have resorted to its inherent powers to transfer this application to the Environment and Land Court.

12.) This transfer does not amount to entertaining and determining any issues in dispute between the parties. It is done in the interests of an expedited hearing and determination of this application.

**Ruling dated, signed and delivered via email at Narok this 27<sup>th</sup> day of October, 2020 in the presence of absence of the parties.**

**J. M. BWONWONG'A**

**JUDGE**

**27/10/2020**