



Mwita & another v Wambui & another (Environment and Land Miscellaneous Application E001 of 2023) [2023] KEELC 21835 (KLR) (29 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21835 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2023
MN GICHERU, J
NOVEMBER 29, 2023**

BETWEEN

PASCAL KOROSO MWITA 1ST APPLICANT

CAROLINE NDUKU MBINDIYO 2ND APPLICANT

AND

EUNICE JULIE WAMBUI 1ST RESPONDENT

TITUS BIRITHIA KUULUH 2ND RESPONDENT

RULING

1. This ruling is on the notice of motion dated 11/1/2023. The motion is by the applicants and seeks an order of transfer of ELC No. E008/2022 from Loitoktok Magistrates Court to this court.
The motion is based on seven grounds. It is also supported by an affidavit sworn by the applicants dated 11/1/2023. It is brought under sections 1A, 1B, 3A, 18(1) (b), order 51 rules 1 and 10 of the Civil Procedure Act and Rules and articles 50(1), 159(d) and (e) and 165 (6) and (7) of the Constitution and all other enabling provisions of the law.
2. The gist of all the above material is that the value of the suit land exceeds the pecuniary jurisdiction of the Magistrates court at Loitoktok.
3. The motion is opposed by the respondents on the ground that the suit filed before the Loitoktok Court is outside the jurisdiction of the court as it should be determined by the District Land Registrar. To this end, the respondents have filed a preliminary objection challenging the jurisdiction of the court to handle a boundary dispute and the Lower Court is yet to determine that application.
4. I have considered the motion in its entirety including the grounds, the supporting affidavit, the replying affidavit, the annexures, the submissions and the law cited therein. I find that the motion has no merit for two reasons.



5. Firstly, it is necessary that the Lower Court first determines the issue of jurisdiction because should the finding be that the dispute relates to a boundary, this court would have no jurisdiction either.
6. Secondly, the applicants who are the plaintiffs in the Lower Court Case do not need any court order to withdraw the suit in the Lower Court. They can do it under Order 25 of the Civil Procedure Rules on their own volition.
7. For these two reasons, I dismiss the motion dated 11/1/2023 with costs.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 29TH DAY OF NOVEMBER 2023.

M.N. GICHERU

JUDGE

