



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIVASHA

CIVIL CASE NO. 10 OF 2016

NAROK COUNTY GOVERNMENT.....PLAINTIFF/APPLICANT

-VERSUS-

SAMWEL KEROSI ONDIEKI T/A

KEROSI ONDIEKI & CO ADVOCATES.....DEFENDANT/RESPONDENT

R U L I N G

1. Until January 2017 the High Court sub-registry at Narok was under the High Court of Kenya at Naivasha. Thus on 10/10/2016 the Narok County Government (Applicant) filed the present Originating Summons in the High Court at Naivasha. The Originating Summons was brought under Order 52 Rule 4 of the Civil Procedure Rules seeking two key orders as follows:-

“1. The Defendant be directed to render true and correct cash account of Kshs 25,061,535.00 paid to the Defendant by the Plaintiff and its predecessor between 2010 and 2015.

2. The Defendant be directed to render to the Plaintiff instruction letters, pleadings, proceedings and evidence of services rendered in the following proceedings relating claim of legal fees:

a. Kisumu High Court Miscellaneous Application No. 96 of 2011, Samwel Kerosi t/a Ondieki & Co. Advocates -Vs- Narok County Government;

b. Kisii High Court Civil Case No. 17 of 2003, Samwel Kerosi -Vs- Narok County Government; and

c. Kisii High Court Miscellaneous Application No. 31 of 2016, Samwel Kerosi -Vs- Narok County Government.”

2. Contemporaneously filed with the Originating Summons was a Notice of Motion seeking *inter alia*, in prayer 3:-

“3. THAT pending hearing and determination of the Originating Summons herein there be a stay of proceedings/execution in the following matters:

a. Kisumu High Court Miscellaneous Application No. 96 of 2011, Samwel Kerosi t/a Ondieki & Co. Advocates -Vs- Narok County Government;

b. Kisii High Court Civil No. 17 of 2003, Samwel Kerosi -Vs- Narok County Government; and

c. Kisii High Court Miscellaneous Application No. 31 of 2016, Samwel Kerosi -Vs- Narok County Government.”

3. The Notice of Motion is expressed to be brought under Order 1A, 1B, 3A and Order 63(e) of the Civil Procedure Act and Order 40 (sic) and 51 Rule 1 of the Civil Procedure Rules. It is supported by the affidavit of Simon M. Ole Sophia.

4. The Respondent opposed the Notice of Motion, and seemingly the Originating Summons, through a Preliminary Objection and Replying Affidavit both filed on 14/11/2016. Before then, the Respondent had also filed an application on 26/10/2016 seeking to have this suit transferred to the District Registry, High Court of Kisii. Nonetheless, on 22/11/2016 the parties proceeded to argue both the Preliminary Objection and Notice of Motion before me.

5. I have perused all the material filed and submissions made in relation to the Notice of Motion dated 26/10/2016. There is no dispute that the present Originating Summons and that the subject matters of the present Notice of Motion, namely, **Kisumu High Court Miscellaneous Application No. 96 of 2011 Samuel Kerosi Ondieki -Vs- Narok County Government; Kisii High Court Civil Case No. 17 of 2003 Samuel Kerosi Ondieki -Vs- Narok County Government; and Kisii High Court Miscellaneous Application No. 31 of 2016 Samuel Kerosi Ondieki -Vs- Narok County Government** arose from a client – Advocate between the Respondent herein and the Applicant’s predecessor, the County Council of Transmara.

6. It would appear that in **Kisii HCCC No. 17 of 2003**, judgment was entered in 2003 for the Respondent against the Applicant in respect of taxed costs amounting to Shs 13,500,000/=, and execution successfully sought vide **Kisii High Court Miscellaneous Application No. 134 of 2003**.

7. Regarding **Kisumu High Court Miscellaneous Application No. 96 of 2011** there seems to be a decree in respect of costs amounting to Kshs 18,793,535/= in favour of the Applicant, based on a decision of **Chemutai J**. The pleadings and judgment of the relevant suit are not attached. The current status of **Kisii High Court Miscellaneous Application No. 31 of 2016 Samuel Kerosi Ondieki -Vs- Narok County Government** is not clear.

8. From my perusal of the Notice of Motion and Originating Summons herein, as well as the submissions, the matters before the High Court of Kenya at Kisii and at Kisumu are closely related and relevant to the present suit. At the time the former and latter suits were filed, there was no High Court Judge based at Narok.

9. In my considered view, it is a prerequisite that a determination first be made as to the place where the present suit will be heard. As well, the parties and the concerned court will have to address the question whether the matters pending before the High Court at Kisii and at Kisumu ought to be transferred to the concerned court, as orders sought in the Notice of Motion and Originating Summons relate to and will impact in one way or another, on these causes. This would preempt a situation where different courts give different orders in respect of the same questions, or appear to clash in the exercise of their respective jurisdictions.

10. In the circumstances, I would make the following directions:-

a. The instant Originating Summons (OS) is hereby transferred to the High Court of Kenya at Narok, which was previously a sub-registry of this court.

b. The Originating Summons (OS) will be placed before the Hon. Judge on 7th March 2017 to give directions regarding the hearing and disposal of the application filed on 26/10/2016 and related issues.

c. Despite the fact that I fully heard the Notice of Motion filed on 10/10/2016, I do not consider it prudent to render a ruling thereon, but will leave it to the succeeding judge to rule on the said Notice of Motion once the jurisdictional issues are resolved.

Costs will abide the outcome of the said Notice of Motion.

Delivered and signed at Naivasha this **24th** day of **February, 2017**.

In the presence of:

Mr. Gichuki holding brief for Mr. Chelanga for Plaintiff/Applicant

N/A for Defendant/Respondent

Court Assistant : Barasa

C. W. MEOLI

JUDGE