



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT GARISSA

MISCELLANEOUS NO. 13 OF 2017

WILSON MUTITE MATHUVA PLAINTIFF

VERSUS

WILSON MWINZI MWANIKI.....DEFENDANT

RULING

Introduction

This is an application by the appellant to have civil case No. 34 of 2014 (Kyuso) pending before Kyuso magistrates court transferred to this court for hearing and determination. The appellant is brought under section 3, 3A 18(18) a b (2) Civil Procedure Code.

It is supported by grounds shown on the face of the said application and the affidavit by the applicant sworn on 30th May 2017. The Respondent filed a replying affidavit sworn on 11th July, 2017 opposing the application.

When the application came up for interparties hearing on 13/7/2017 both parties who are acting in person relied on their pleadings filed herein both in support and in opposition thereto.

The issue for determination in this application is whether this court has jurisdiction to order that a suit instituted in the subordinate court be transferred to itself for hearing and determination. Section 18 of the Civil Procedure Act cap. 21 Laws of Kenya provides as follows:

- (a) On application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the high court may at any stage-
 - (b) Withdraw any suit or other proceedings pending in any court subordinate to it and competent to try or dispose of the same or
 - (i) Try or dispose of the same or
 - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same or
 - (iii) Retransfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid the court which

thereafter tries such suit may subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was withdrawn.

In the case of **Aberdare investments -vs- Bernard Wachira & 5 others (2014) eKLR**. That court pronounced itself on this issue when Nyamueya J. held as follows:

“ It is clear from those provisions [section 17 & 18 of the Civil Procedure Act] that the court with jurisdiction to transfer a suit from or to a subordinate court is the high court or court of similar status.”

A similar holding was made by Makau J. in the case of **Joseph Mururi –vs- Godfrey Gikundi Anjuri (2012) eKLR** where the judge held thus.

“ It is therefore clear from the above mentioned section (section 18 (1) of the Civil Procedure Act) that the high court has, on an application by any of the parties after due Notice to the parties and after hearing such of them as desires to be heard on its own motion without such notice may at any stage order withdrawal of any suit pending in any court subordinate to it and competent to try and dispose of the same”

The applicant in this case is the defendant in the civil case No. 34 of 2014 (Kyuso) Law Courts. In his supporting affidavit, he states that the magistrates court at Kyuso Law Courts has no jurisdiction to hear and determine land disputes.

Applicable Law

Section 9 of the magistrates’ Court Act states as follows:-

“ Claims in Employment , labour Relations claims; Land and environment cases.

A magistrates court shall

(a) In the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act (cap 12A) and subject to the pecuniary limits under section 7(i) hear and determine claims relating to-

(i) environment planning and protection, climate issues, land use planning, tutee tenure, boundaries, rates, rents, valuations mining, minerals, and other natural resources.

(ii) Compulsory acquisition of land.

(iii) Land Administration and management.

(iv) Public, private and community land and contacts, choses in action or other instruments granting any enforceable interest in land and

(v) Environment and land generally “

My plain reading of the said section of the magistrates’ court Act clearly shows that magistrate courts have jurisdiction to handle land related disputes subject to pecuniary limitation as set out in the said Act.

Suffice to say that there are two appeals pending before the Court of Appeal being Civil Appeal No. 287 of 2016 and 3 of 2017 respectively on the jurisdiction of magistrates’ courts to hear and determine land related issues. The superior court in a three judge bench comprising **Hon. Emukule, Hon. Chetembwe & Hon. Mugure Thande J J** had held that magistrates court have no jurisdiction to handle Environment and Land matters and that such jurisdiction was only donated by the constitution of Kenya 2010 to the Environment and Land Court pursuant to article 162 of the constitution. The court of Appeal stayed that

order pending hearing a determination of the two main Appeals. As we speak, the Court of Appeal is yet to render itself on that jurisdictional issue whether section 9 of the magistrates' court Act as read with section 26 of the Environment and land Court Act (cap 12A) are constitutional or not. In the meantime, I hold and find that pending the hearing and determination of the two appeals, the magistrates' court are properly clothed with jurisdiction to hear and handle land related disputes as provided for under section 9 and section 26 of the magistrates' court Act and Environment & Land Court Act respectively. In the upshot, the application dated 30/5/2017 lacks merit and the same is hereby dismissed with each party to bear her own costs.

Read delivered and signed in the open court at Garissa this 25th day of July 2017.

Mr. Enock Chirchir Cheron

Environment & Land Court Judge