



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

MISC. APPL. NO 174 OF 2014

JUSTUS LETIO SAMBU.....PLAINTIFF

VERSUS

JOHN WACHIRA MUGO & ANOTHER.....DEFENDANT

RULING

(Application to transfer suit pending before the Magistrates Court to the Environment and Land Court; Suit filed in 2006 before ELC was established; transitional provisions stating that such suit can be finalized in the Magistrates Court; no need to transfer the suit; application dismissed)

1. This is a miscellaneous application filed on 4th August 2014 and the substantial order that is sought is for the transfer of the suit Nakuru CMCC No. 844 of 2006 from the Magistrate's Court at Nakuru to the Environment and Land Court for hearing and disposal. The reasons given for the request to transfer are that the subject matter in the said case is land and that the Chief Magistrate's Court has no jurisdiction to hear and determine the matter.

2. The application is opposed by the respondents who filed Grounds of Opposition. The gist of the objection is that the Magistrate's Court has jurisdiction and the respondent have referred to Legal Notice No. 5178 of 2014 to support their position.

3. I asked counsels to make written submissions but only counsel for the respondent filed submissions. Counsel submitted that the case in issue was filed in the year 2006 before the establishment of the Environment and Land Court (ELC) and it is only after establishment of the court that all land matters can be handled by the ELC .

4. I have looked at the application and considered the submissions of counsel. First, I take exception to the manner in which the application was filed as the pleadings in the suit sought to be transferred were never annexed. I do not know what material the applicant wanted the court to look at if not the pleadings of the case sought to be transferred. It is very basic that any person wishing to make an application for transfer needs to at the very least annex copies of the pleadings. It is not for a party to simply make the application and hope that the court will proceed on a fishing expedition to find out what sort of case is sought to be transferred. Having no pleadings before me, this application is hopeless and must fail.

5. But assuming that the matter sought to be transferred is a land matter, does it mean that with the establishment of the Environment and Land Court, (ELC) all land matters must be transferred to the ELC? This is not a new question. I am aware of at least two decisions, that of ***Sarah Chelagat vs Musa Kipkering, Eldoret ELC Misc. Application No. 6 of 2013*** and ***John Nakhabi Okelo v Obura Nelson,***

Busia High Court, Misc. application No. 205 of 2012.

6. In both, it was determined, that a suit filed before the Magistrate's Court, before the establishment of the ELC, ought to be completed in that court, so long as the Magistrate's Court had jurisdiction to hear the case when it was first filed.

7. I see no need to depart from the reasoning in these two cases. The establishment of the ELC by the Constitution of 2010, and the Environment and Land Court Act of 2011, did not mean that all land cases pending before Magistrates Courts had to be transferred to the ELC. The ELC is a creature of the Constitution of 2010 and did not exist before that. Land Cases were therefore filed either in the High Court or the Magistrates Courts. Section 22 of Schedule 6 of the Constitution provides for the transition to the new regime and it is drawn as follows :-

22. All judicial proceedings pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under this Constitution or as directed by the Chief Justice or the Registrar of the High Court.

8. The above is echoed in Section 30 of the Environment and Land Court Act, 2011 which is drawn as follows :-

30. (1) All proceedings relating to the environment or to the use and occupation and title to land pending before any Court or local tribunal of competent jurisdiction shall continue to be heard and determined by the same court until the Environment and Land Court established under this Act comes into operation or as may be directed by the Chief Justice or the Chief Registrar.

9. It will be seen from a reading of Section 22 of the 6th Schedule of the current Constitution and Section 30 of the Environment and Land Court Act, that provision was made for matters pending before courts other than the ELC, to continue in those courts or as may be directed by the Chief Justice or Chief Registrar.

10. The Chief Justice has issued Practice Directions to guide the transition to the new ELC regime. Four Practice Directions have been issued, the current one being that published in the Kenya Gazette on 28th July 2014, and it provides that matters pending before Magistrates Courts shall continue to be heard in those courts. This direction is in line with section 22 of the 6th schedule of the constitution and section 30 of the Environment and Land Court Act.

11. It follows that so long as the Magistrates Court had jurisdiction when the suit was originally filed, then there is no need to ask for it to be transferred to the ELC, for the jurisdiction of the Magistrates Court for pending matters is retained by the current law. This suit was filed in the year 2006 when the ELC had not been established. It has not been alleged that the Magistrates Court had no jurisdiction when the suit was filed. That jurisdiction, on pending matters, as I have shown, has not been taken away.

12. I therefore see no merit in this application and it is hereby dismissed with costs.

Dated, signed and delivered in open court at Nakuru this 19th January, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of:-

Ms. Moraa holding brief for Mr. Simiyu for applicant.

Ms Alwala present for respondents.

CA: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

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