



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

MISC. APPLICATION NO. 125 OF 2015.

RODGERS ODIKARA OKANGA..... APPLICANT.

VERSUS

1. PATRICK KUOBA ADEYA)

2. PETER KUOBA)

3. EVERLYNE PLOKIO)

4. SIMON OLOKIO..... RESPONDENTS.

RULING

1. This is a ruling on a Notice of Motion filed here on 11th August, 2015 seeking to transfer BUSIA CMCC. NO 157/2015 to this court for hearing. The application expressed to be brought under section 18 of Civil Procedure Act. The main reason for bringing the application is that the lower court does not have jurisdiction and that it is only this court that can entertain the suit.

2. The application was brought by the applicant - **RODGERS ODIKARA OKANGA** - against the four (4) respondents **PATRICK KUOBA ADEYA, PETER KUOBA, EVERLYNE OLOKIO** and **SIMON OROKIO**. The land in dispute is **L.R. BUKHAYO/KISOKO/2279**. The Respondents filed various replying affidavits stating, inter alia, that they occupy a different land parcel - L.R BUKHAYO/KISOKO/2281. The applicant is claiming that the respondents occupy his land parcel NO. 2279 and should therefore be evicted.

3. The respondents averred further that the matter is essentially a boundary dispute and this court would therefore also not have jurisdiction to handle it. I heard the application inter partes on 1st December, 2015.

4. Quite clearly, the lower court does not have jurisdiction, this being a land matter. The respondents would have the court believe that the matter is a boundary dispute. I have looked at the plaint filed in the lower court. The suit as filed does not come across as a boundary suit. It seems to be one of forcible occupation and/or trespass. Besides, even if the suit were to turn out to be a boundary dispute, only this court can be addressed to treat it as such .If it turns out to be so, no doubt the court will refer it to the appropriate place for action. The beginning point obviously should be to transfer the suit here so that both sides can raise their concerns,

5. Accordingly, the suit in the lower court is ordered to be transferred here for further necessary action.

A.K. KANIARU,

JUDGE.

DATED AND DELIVERED ON 16TH DAY OF FEBRUARY, 2016.

IN THE PRESENCE OF;

PLAINTIFF/APPLICANT.....

1ST RESPONDENT.....

2ND RESPONDENT.....

3RD RESPONDENT.....

4TH RESPONDENT.....