



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**ELC MISCELLENEOUS APPLICATION NO. 10 OF 2014**

CANY INVESTMENTS LIMITED .....PLAINTIFF/APPLICANT

VERSUS

COUNTY GOVERNMENT OF KIAMBU

THIKA SUB-COUNTY ..... DEFENDANT/RESPONDENT

**RULING**

This is in respect to the plaintiff/applicant's Notice of Motion dated 10<sup>th</sup> March, 2014 seeking the transfer of Thika Chief Magistrate's Civil Case No. 942 of 2013 to this Court

The same is based on the grounds set out in the said application which are that the case touches on title of land being THIKA MUNICIPALITY BLOCK 29/366 and that the nearest High Court convenient to both parties is this Court which has inherent jurisdiction in the matter. The application was supported by the affidavit of ROBERT B.K. LIBOSSO the plaintiff's Chief Security officer in which he depones, inter alia, that the need to transfer Thika CMCC No. 942 of 2013 to this Court arises out of the fact that the Court in Thika has no jurisdiction to deal with the case.

The respondent raised a Preliminary Objection to the said application on the following grounds:-

1. ***That the suits ought to be transferred is a nullity for want of jurisdiction and hence there is nothing to be transferred***
2. ***It is trite law that jurisdiction of the Court cannot be conferred even by consent of the parties***
3. ***The application herein is incompetent, totally defective and is otherwise an abuse of the process of the Court and ought to be dismissed with costs.***

That Preliminary Objection is the subject of this ruling.

I have considered the application, the objection thereto as well as the affidavit of ROBERT B.K. LIBOSSO and the submissions of counsel.

In an application such as this, it is important for the Court to have a look at the pleadings in the suit sought to be transferred so as to be able to make a decision on whether or not the suit sought to be transferred does really qualify to be transferred. It may well turn out that the subordinate Court from which the suit is sought to be transferred infact has jurisdiction to deal with the dispute in question. While this Court is established under **Article 162(2) of the Constitution** to hear and determine disputes relating to the Environment and the use and occupation of and title to land and further, while the **Land Act No. 6 of 2012** provides under **Section 150** that:-

***“The Environment and Land Court established in the Environment and Land Court Act is vested with exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act”***,

a clear reading of ***Section 13(1) of the Environment and Land Court Act*** suggests that it was not the intention of the Legislature to take away the jurisdiction of subordinate Courts to hear cases involving land. That section reads as follows:-

***“The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya”*** emphasis added.

If therefore this Court has the powers to hear appeals, then it follows that those appeals can only arise from cases heard in subordinate Courts and other Tribunals. It follows therefore that in appropriate cases falling within the pecuniary jurisdiction of subordinate Courts and guided by the Chief Justice’s Practice Directions, cases touching on the Environment and Land can still be heard in the subordinate Court. As stated earlier, a dispute may touch on land but that, ipso facto, does not necessarily mean that such dispute is beyond the jurisdiction of the subordinate Court. However, that issue can only be best answered when the pleadings are available to the Court for perusal.

In the matter now before me, those pleadings have not been availed and therefore all I can rely on is the supporting affidavit of ROBERT B.K. LIBOSSO and the relevant paragraphs of that affidavit are as follows:-

***3: “That I have now been informed that it is only the Land and Environment Court at the High Court which can deal with the case”***

***4: “That the subordinate Court at Thika has no jurisdiction to deal with the matter but which I had not been properly advised”***

I can only presume that in swearing that affidavit, Mr. LIBOSSO had sought the necessary legal advice. Indeed, in paragraph 4 of the said affidavit, he says he has now been ***“properly advised”***. It may very well turn out that the suit in the subordinate Court involves issues of trust or adverse possession which are the preserve of the High Court in which case the subordinate Court would have no jurisdiction. In the absence of the pleadings in the subordinate Court, this Court is entitled to go by the affidavit of Mr. LIBOSSO in which he is categorical in paragraph 4 that the subordinate Court at Thika has no jurisdiction.

It follows that if by the plaintiff’s own submission the subordinate Court at Thika has no jurisdiction over Thika CMCC No. 942 of 2013, then this Court, as was held in ***KAGENYI VS MOSIRAMO & ANOTHER 1968 E.A. 43***, would have no powers to transfer the same to this Court. It is trite that where a suit is instituted in a Court having no jurisdiction, such a suit is a nullity in law and whatever is a nullity in law cannot be transferred as it is nothing in law. See also the cases of ***ABRAHAM WAMIGWI VS SIMON WANJIKU & ANOTHER 2012 e K.L.R.*** and ***AINSWORTH KILONZO VS RUARAKA METALS LTD & ANOTHER 2009 e K.L.R.***

In the circumstances and in view of the plaintiff’s own admission that Thika CMCC No. 942 of 2013 was filed in a Court with no jurisdiction, the plaintiff’s application to have the said suit transferred to this Court cannot be sustained. The same is accordingly dismissed with costs. As agreed by the parties on 17<sup>th</sup> July, 2014, this ruling shall also apply to the following cases:-

- 1. Misc Application No. 7 of 2014***
- 2. Misc Application No. 8 of 2014***
- 3. Misc Application No. 9 of 2014.***

It is so ordered.

**B.N. OLAO**

**JUDGE**

**13<sup>TH</sup> JANUARY, 2015**

13/1/2015

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Njoroge for Applicant – absent

Mr. Tonui for Respondent – present

COURT:

Ruling delivered in open Court this 13<sup>th</sup> day of January, 2015.

Mr. Njoroge for Plaintiff/Applicant – absent

Mr. Tonui for Defendant/Respondent – present.

**B.N. OLAO**

**JUDGE**

**13<sup>TH</sup> JANUARY, 2015**