



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 479 OF 1998

1. SALOME WANGUI KIAMBATI

2. JAMES KIAMBATI

3. STEPHEN KARANJA.....PLAINTIFFS

VERSUS

1. DORIS WANJIRU

2. JONATHAN KIAMBATI MBARIA.....DEFENDANTS

RULING

1. This is a ruling on the Plaintiffs' notice of motion dated 20th March, 2015. The Plaintiffs sought the transfer of this suit to the Environment and Land Division in the High Court at Nairobi. Through the supporting affidavit of the 2nd Plaintiff, it is averred that this matter is for damages for unlawful eviction. A history of how their file has moved from one advocate to another was given i.e. from Janet Mulwa Advocate to Kivuva Omuga & Co. Advocates. It was stated that the firm of Kivuva Omuga & Co. advised the Plaintiffs to await the outcome of confirmation for succession in a course they were party to i.e. P & A Cause No. 2020 of 2009. That in the year 2006, it was pronounced in the succession cause that the Plaintiffs were the rightful heirs on Limuru/Kamirithu/380 but their advocates took no step prompting them to instruct the firm of Shairi & Co. They however were at a dilemma on who they were to serve as Defendants since the Defendants reside in USA but they later discovered that John Thuo Kiragu held a power of Attorney. That even with the delays, they are still intent in pursuing this matter.

2. This application is unopposed.

3. I have considered the deposition by the Plaintiffs. The issue before this court is whether or not this matter falls under the jurisdiction of the Environment and Land Court. The Plaintiffs' claim is that they had been occupiers of a portion of Limuru/Kamirithu/380 measuring 12 acres for over forty (40) years. On 30th August, 1995, the Defendants unlawfully entered into the said property and demolished the Plaintiffs' three dwelling houses. For that reason the Plaintiffs have been deprived of their shelter and their house hold furniture. The Plaintiffs gave the particulars of loss and damages as follows:-

Value of 3rd Plaintiff's house KShs. 184,500/=

Value of 2nd Plaintiff's house KShs. 267,300/=

Pigsties KShs. 31,800/=

Stolen and destroyed furniture KShs.150,000/=

4. The Plaintiffs sought prayers for the total of losses amounting to KShs. 633,600/- and general damages for loss of use and inconvenience.

5. The Respondent on this point cited **Owners of the Motor Vessel “Lilian S” Caltex Oil (Kenya) Ltd (1989) KLR 1** as referred to in **Republic v. Chairman, Uasin Gishu Land Disputes Tribunal & 2 Others, Kaptich Arap Morogo Ex parte (2014) eKLR**. Where it was stated:-

“Jurisdiction is everything. Without it, a court has no power to make one more step.” Any decision, however well reasoned, made out of jurisdiction is a nullity and cannot be given effect.”

6. Section 13 (2)(d) of the Environment and Land Act is to the effect that the Environment and Land court shall have the power to hear and determine disputes relating to public, private and community and contracts, choses in action or other instruments granting any enforceable interests in land. The action herein arose from an alleged trespass to the suit property which in accordance to Section 13 (2) (d) of the Environment and Land Act falls within the jurisdiction of the Environment and Land Court. The hearing of this case has not commenced, therefore as per the practice directions of 9th November, 2012 vide Gazette Notice No. 16268, this suit should be transferred to the Environment and Land Court.

a. This suit be transferred to the Environment and Land Court for hearing and determination as prayed in the Plaintiff’s motion dated 20.03.2015.

b. Costs to await the outcome of the suit.

Dated, Signed and Delivered in open court this 22nd day of May, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant