



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

**ELC CASE NO. 275 OF 2014**

**TERESIA WANJIRU NGANGA (SUING AS THE ADMINISTRATOR OF  
THE ESTATE OF JULIUS NGANGA NDUNG’U .....PLAINTIFF**

**VERSUS**

**NATIONAL IRRIGATION BOARD (THROUGH THE MANAGER MWEA  
IRRIGATION SETTLEMENT SCHEME ..... DEFENDANT**

**RULING**

This is in respect to the Defendant/Applicant’s Notice of Motion dated 9<sup>th</sup> December 2014 and filed in this Court on the same day seeking the following orders:-

1. *That this suit be transferred to Wanguru Principal Magistrate’s Court for hearing and determination*
2. *That costs of this application be in the cause.*

The application which is supported by the affidavit of the defendant/applicant’s counsel is premised on the grounds that:-

- *The Wanguru Principal Magistrate’s Court has the jurisdiction to determine this matter*
- *The cause of action arose at Mwea which is within the jurisdiction of Wanguru Principal Magistrate’s Court*
- *The parties in this dispute reside and work at Mwea.*

Grounds of opposition have been filed in which it is pleaded, inter alia, that:-

- *Though the Wanguru Magistrate’s Court may be seized of pecuniary jurisdiction of the disclosed value of the damage of Ksh. 605,000/=, that cannot be severed from the entire land title which is about six point nine one (6.91) acres and whose value is more than Ksh. Ten million (10,000,000/=) which is beyond the Chief Magistrate’s Court or even the Wanguru Principal Magistrate’s Court*
- *Notwithstanding the above, it would not be desirable to transfer the already filed suit as any dissatisfied party would still come back to this Court thus throwing the matter back to where it was originally filed*
- *It is more desirable and expedient if this matter is heard before this Court.*

The application was canvassed by way of written submissions which have been filed by Mr. Ombachi Advocate for the defendant/applicant and Mr. Wambugu Advocate for the plaintiff/respondent.

I have considered the application, the supporting affidavit and annexures thereto as well as the grounds of opposition and the case law cited.

The genesis of this application is that on 8<sup>th</sup> October 2014, the plaintiff/respondent filed this suit seeking the following remedies against the defendant/applicant:-

- i. ***An order of permanent injunction restraining the defendant by its agents, servants, employees and/or through whomsoever against trespassing on the land***
- ii. ***An order of mandatory injunction compelling the defendant whether by its agents, servants, employees and/or through whomsoever to remove all the structures, tunnels, canals, dumped soil by returning/filling back the excavated canal as the land was before the trespass at its costs to the satisfaction of the plaintiff***
- iii. ***Payment of Ksh. 605,000/= being costs of the specific damage occasioned on the land together with costs of the valuation***
- iv. ***General damages***
- v. ***Costs of and incidentals to this suit.***

The defendant filed a defence in which it denied trespassing upon the plaintiff or destroying her property adding that in any event, that was with the plaintiff's consent. The defendant pleaded further that although this Court has jurisdiction to hear this suit, the same can equally be heard by the Wanguru Law Courts which has jurisdiction.

It is clear that the dispute involves trespass to plaintiff's land where property valued at Ksh. 580,000/= was alleged to have been destroyed by the defendant and a valuation report was prepared at a cost of Ksh. 25,000/= thus the total claim of Ksh. 605,000/= which is claimed as special damages. There is also a claim for general damages which will of course be determined by the trial Court. It is not in dispute that the land upon which the trespass was committed is situated in Mwea within the jurisdiction of the Principal Magistrate's Court at Wanguru. That Court is presided over by a Principal Magistrate whose pecuniary jurisdiction is Ksh. 4,000,000/= (four million). It is also not disputed that both parties herein reside within Mwea and the nearest Court is the Principal Magistrate's Court at Wanguru. ***Section 11 of the Civil Procedure Act*** provides that every suit shall be instituted in the Court of the lowest grade competent to try it. ***Section 12*** of the same Act provides further that subject to the pecuniary limitations prescribed by law, a suit for compensation for wrong to immovable property shall be instituted in the Court within the local limits of whose jurisdiction the property is situated. Further, the ***Chief Justice*** has issued ***Directions*** that Magistrates Courts shall continue to hear and determine all cases relating to the use and occupation of land where those Courts have pecuniary jurisdiction. In the grounds of opposition, it is stated that although the value of the damaged property is Ksh. 605,000/=:, the value of the land itself is more than Ksh. 10,000,000/= (ten million) although this was corrected to Ksh. 19,693,500/= in the plaintiff/respondent's written submissions.

Bearing all the above into account, is this a proper case for the Principal Magistrate's Court at Wanguru? My answer is in the affirmative for the following reasons:-

Firstly, the property upon which the trespass was committed is situated at Mwea within the jurisdiction of the Principal Magistrate's Court at Wanguru where the parties also reside. ***Section 11 and 12 of the Civil Procedure Act*** mandates that such a suit be instituted in the lowest Court competent to try it.

Secondly, this dispute has nothing to do with the ownership of the property identified as Kirinyaga/Gathigiriri/209 whose value has been given in the grounds of opposition as Ksh. 10,000,000/= and in the submissions as Ksh. 19,693,500/=: . Nowhere in her pleadings has the plaintiff/respondent alleged that the defendant/applicant has taken over that land. The complaint is that the defendant/applicant has damaged her crops and trees on a portion of the land and dumped soil thereon and the value of that damage together with the valuation report are given as Ksh. 605,000/=: . The plaintiff/respondent's claim is not for the value of the land. It is for the value of the damaged crops and dumped soil which is specified as Ksh. 605,000/=: . It is also for orders of permanent and mandatory injunctions requiring the defendant/applicant not to trespass on the land and to remove structures and

dumped soil at its own costs. Those remedies are well within the pecuniary jurisdiction of the Principal Magistrate's Court at Wanguru which is Ksh. 4,000,000/=.

Thirdly, and as regards the claim for general damages, I agree with counsel for the defendant/applicant that the value of the land is not really a factor because, should the plaintiff/respondent succeed in her claim and the mandatory injunction is issued as prayed, the portion of land that was excavated will be restored to its original condition at the defendant/applicant's cost to the satisfaction of the plaintiff/respondent. That would leave only general damages which in my view, an award within the pecuniary jurisdiction of the Principal Magistrate's Court at Wanguru would adequately meet the ends of justice.

Finally, with regard to the case of **PARTICK KABURU VS SHREEN'S ENTEPRISES LTD & ANOTHER H.C.C.C No. 37 of 2009 (NBI)** cited by the plaintiff/respondent's advocate, I have looked at that case and it is not really helpful in this case because it was concerned with two cases one pending in the lower Court and the other in the High Court and the application sought was that the case pending in the lower Court be the test case and that the case in the High Court be stayed pending the determination of the case in the lower Court. The Judge rejected that argument on the basis that if the case in the lower Court is selected as the test suit, the losing party would still have a right of appeal in the High Court thereby throwing the issue of liability back to the High Court which would not be expedient. That is not the situation in this case now before me.

Having considered all the above, I am of the view that the dispute herein can properly be adjudicated by the Principal Magistrate's Court at Wanguru which is seized of both Geographical and Pecuniary jurisdiction.

I accordingly allow the defendant/applicant's Notice of Motion dated 9<sup>th</sup> December 2014 and direct that this suit be transferred to the Principal Magistrate's Court at Wanguru for hearing.

Costs shall be in the cause.

**B.N. OLAO**

**JUDGE**

**18<sup>TH</sup> SEPTEMBER, 2015**

18/9/2015

Before

B.N. Olao – Judge

Gichia – CC

Mr. Kariuki for Plaintiff – absent

Mr. Ombachi for Defendant – present

COURT: Ruling delivered this 18<sup>th</sup> day of September, 2015 in open Court.

Mr. Kariuki for Plaintiff - absent

Mr. Ombachi for Defendant – present.

**B.N. OLAO**

**JUDGE**

**18<sup>TH</sup> SEPTEMBER, 2015**

Explanatory note on delay

This ruling was due on 28<sup>th</sup> May, 2015 but I was bereaved and travelled out of the country until 7<sup>th</sup> July when I resumed duties and soon thereafter the Court proceeded on vacation until 16<sup>th</sup> September 2015 hence the delay. The same is however regretted.

**B.N. OLAO**

**JUDGE**

**18<sup>TH</sup> SEPTEMBER, 2015**