



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

MISC NO. 9. OF 2020

MAREN OLE PILALE.....PLAINTIFF

VERSUS

ASHA NASIEKU TEEKA.....1ST RESPONDENT

DAVID SARUNI TEEKA.....2ND RESPONDENT

RULING

1. What is before this court for ruling is the Notice of Preliminary Objection dated 2nd July, 2021 and filed by the Respondent. It seeks to have the Notice of Motion dated 28th July, 2020 and filed in court on 3rd of August, 2020 by the counsel for the defendant/applicant be struck out with costs on the following grounds: -

1. That under appendix G to the Civil Procedure Rules, the Applicant's Notice of Motion dated 28th July, 2020 ought to have been filed at the Nakuru High Court (ELC) since the appeal sought to be filed out of time seem to have arisen from the judgment and decree in Nakuru CM ELC No. 301 of 2018 Asha Nasieku Teeka & David Saruni Teeka (Suing as the legal representatives and administrators of the estate of the late Ibrahim Tajeu Teeka) versus Maren Ole Pilale.

2. That the Applicant's earlier application in Nakuru High court Misc Civil Application No. 3 of 2019 Maren Ole Pilale versus Asha Nasieku Teeka & David Siluni Teeka, seeking to have Nakuru CM ELC No. 301 of 2018 Asha Nasieku Teeka & David Saruni Teeka (Suing as the legal representatives and administrators of the estate of the late Ibrahim Tajeu Teeka) versus Maren Ole Pilale transferred to the Narok High Court (ELC) for hearing and determination was dismissed by his Lordship the Honourable Justice Munyao Sila (J) and it is plainly unprocedural for the applicant to file the present Notice of Motion at Narok.

3. The Respondent filed written submissions dated 16th November, 2021. They have raised one issue for determination which is whether this honourable court should allow the Respondent's Notice of Preliminary Objection dated 2nd July, 2021. They submit that the issues arise from the fact that the applicant is seeking leave to file an appeal out of time and is also seeking to have the suit transferred to Narok High court (ELC). Briefly, the main suit proceeded to full hearing at Nakuru CM ELC No. 301 of 2018 on 22nd May, 2019 where counsel for the applicant was aware of the hearing date as the same date had been taken with the consent of the court. They submit that the applicant did not raise any objection or intention of not proceeding with the hearing before hand as they were still lingering on their application for transfer of suit which had been dismissed with costs. The hearing proceeded and judgment was delivered on 23rd April, 2020 in favour of the respondents. The respondents submit that the applicant waited two months later to file an appeal out of time and the same was done in a different court. The respondents submit that **Section 79G** of the **Civil Procedure Act** deals with the issue of time of filing of appeals from subordinate courts and for enlargement of time. They rely on the case of **Serephen Nyasani Menge versus Rispar Onsase [2018] eKLR**. It is their submission that the applicant has been completely docile in defending this matter by not following up to see an expeditious disposal and the applicant has poorly attempted to invoke irrelevant provisions of the law and procedures thereto.

4. The respondents further submit that an applicant seeking enlargement of time to file an appeal must show that he has a good cause for doing so as was held in the case of **Daphne Parry versus Murray Alexander Carson [1963] EA 546** and **First American Bank of Kenya Ltd versus Gulab P Shah & 2 Others Nairobi [2002] 1 EA 65** which sets out the factors to be considered in deciding whether or not to grant such as application.

5. The applicant did not file written submissions.

6. I have analysed the Notice of Preliminary Objection and the written submissions filed by the respondents. A Preliminary Objection was described in the **Mukisa Biscuits Manufacturing Co. Ltd...Vs...West End Distributors Ltd (1969) EA 696** to mean: -

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

Further Sir **Charles Nebbold, JA** stated that: -

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”.

7. The Notice of Motion application dated 28th July, 2020 arises out of a decision of the Principal Magistrate’s Court in Nakuru in CMC ELC No. 301 of 2018. The applicant herein seems to be invoking the jurisdiction of the Narok ELC Court which in my view is unprocedural. There exists an Environmental and Land Court in Nakuru which is currently presided by an ELC Judge. Such an application can only be heard in the ELC court sitting in Nakuru. For this reason, I find the Notice of Preliminary Objection dated 2nd July, 2021 meritorious. The orders issued on 26th November, 2020 are hereby vacated and the Notice of Motion application dated 28th July, 2020 is struck out with costs to the respondents

It is so ordered.

DATED, SIGNED and DELIVERED VIA EMAIL ON 28TH MARCH, 2022.

Mbogo C.G

Judge

In the presence of: -

CA: Timothy Chuma