



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC. CASE NO. 83 OF 2014

PATRICK LUMUMBA INYANGALA.....PLAINTIFF/APPLICANT

VERSUS

SHENG LI CHINA COMPANY LTD.....1ST DEFENDANT/RESPONDENT

NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY.....2ND DEFENDANT/RESPONDENT

RULING

Coming up before me for determination is the Notice of Preliminary Objection dated 11th February 2014 where the 2nd Defendant stated as follows:

1. That this suit is incurably defective and should be struck out.
2. That there is no cause of action against the 2nd Defendant.

The 2nd Defendant filed their written submissions dated 21st February 2014 in which Counsel for the 2nd Defendant addressed the issue of the jurisdiction of this court to hear this matter. It should be noted that the issue of jurisdiction was not one of the issues they raised in their Preliminary Objection and should not therefore have been addressed in their submissions. In response to the 2nd Defendant's submissions, the Plaintiff also filed his submissions dated 25th March 2014 in which they too addressed the issue of the jurisdiction of this court to hear this suit.

If I may overlook the omission on the part of the 2nd Defendant, I will proceed to address the issue whether or not this suit is properly before this court being the Environment and Land Court, Nairobi. Jurisdiction has many elements contained in it. There is the question of the nature of the subject matter of the dispute, there is the question of the geographical location of the subject matter of the suit as well as the pecuniary value of the subject matter. For our purposes, we shall limit ourselves to the nature of the subject matter of the suit as well as the geographical location. Under Article 162(2)(b) of the Constitution of Kenya, 2010, the Environment and Land Court is conferred with jurisdiction to hear and determine disputes relating to -

“the environment and the use and occupation of, and title to, land.”

Does this suit before me fall within this category? This suit has been filed by a land owner whose enjoyment of his land has purportedly been interfered with by the activities of his neighbor who is carrying on quarrying activities on his land. So far as I can tell, the dispute therefore falls within the category of disputes envisaged in the Article cited above which is a dispute relating to the environment and the use and occupation to land. As to the geographical location, it is now clear that the Environment and Land Court is located in various cities throughout the country and litigants are required to file their suits within the closest Environment and Land Court. Prior to filing of this suit, there was no Environment and Land Court sitting in Machakos. However, this court has now been established in Machakos and as the subject matter of this suit is in Katani/Mavoko, the nearest Environment and Land Court is the one based in Machakos and not Nairobi. This suit should therefore be heard by the Environment and Land Court sitting in Machakos and I transfer the suit to that court. I therefore disagree with the 2nd Defendant that this suit is incurably defective and should be struck out.

The final issue I must address is whether the 2nd Defendant is a rightful party in this suit. One of the issues that the Plaintiff has raised in this suit is the authorization of the 1st Defendant by the 2nd Defendant to conduct the quarrying activities complained of. Only the 2nd Defendant can answer this question conclusively. The Environmental Management and Coordination Act confers the 2nd Defendant with the mandate to protect the environment and to ensure that everybody else does so. Accordingly, in my view, the 2nd Defendant is a rightful party to this suit.

In light of the foregoing, I hereby dismiss the Preliminary Objection. Costs shall be in the cause.

DELIVERED AND SIGNED AT NAIROBI THIS 17TH DAY OF OCTOBER 2014.

MARY M. GITUMBI

JUDGE