



REPUBLIC OF KENYA

High Court at Nakuru

Miscellaneous Application 553 of 2012

DANIEL SUDUI KURAOAPPLICANT

VERSUS

PAMELA ATIENO OLUOCHRESPONDENT

RULING

This is an application by notice of Motion dated 10th December 2012. The applicant seeks orders that this Honourable court be pleased to transfer the Narok S.P.M Civil cause no 59/2011 to Environment and Land Court Nakuru and that costs of the application be provided for.

The application is premised on the grounds that the applicant intends to amend his plaint to include a counter claim for cancellation of the title issued to the Respondent which prayer cannot be granted by the subordinate court.

In the affidavit dated 10th December 2012 and supplementary Affidavit dated 13th February 2012, by Daniel Sudoi Kurao in support of the application, he depones that the respondent filed civil suit No.59/2011 in the Principals Magistrate's Court in Narok against him. In his defence the plaintiff raised issues of fraud and proceeded to place a caution on the parcel of land in question: That no prejudice will be suffered by the respondent if his application is allowed.

This is the application that came before me Exparte on 10th December 2012. I directed that the application be served upon the respondents. Affidavits of service were filed dated 13th February 2013 and 20th February 2013 respectively stating that service had been effected upon the Defendants advocates M/S Kiptoo and Co Advocates who had acknowledged receipt by signing and stamping the copies.

In his submissions before me on 21/2/2013 counsel for the Applicant urged the court to allow the application as it was unopposed and prayed for orders to allow the transfer of Civil Suit 59/2011 to Nakuru Environment and Land Court for reasons that the Applicant intended to file a counter claim for cancellation of Respondent's title and that the Senior Principal Magistrates Court had no jurisdiction to order for cancellation of a title deed.

I have carefully considered all the material placed before me, the plaintiffs Notice of motion, supporting and supplementary affidavits.

The question before this court is whether the Senior Principal Magistrate's Court in Narok has jurisdiction to cancel the title of **CIS-MARA/OLELESWA/7108**.

Section 159 of the registered Land Act Cap 300 states as follows:

“Civil suits and proceedings relating to the title to or, the possession of land, or to the title to a lease or change, registered under this Act, or to any interest in the land, lease or change, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five Thousand pounds, by the resident magistrates court, or where the dispute comes within the provisions of section 3(1) of the land dispute Tribunal Act in accordance with this Act”.

The Chief Justice’s practice note Gazette notice no 16268 dated 29th November 2012 paragraph 7 states as follows“ **Magistrates courts shall continue to hear and determine all cases relating to the environment and use and occupation of and title of land (whether pending or new) in which the courts have the requisite pecuniary jurisdiction**”.

In the instant case the suit land is registered under the registered land Act (Cap 300)valued at Ksh60,000/=. This squarely falls within the Resident Magistrate’s requisite jurisdiction of twenty five thousand pounds or Ksh500,000/=.

I find and hold that the Senior Principal Magistrates Court in Narok has the requisite pecuniary jurisdiction to try the matter filed before its court and the counter claim can also be filed before the same Court. I direct that the matter be heard and determined before the Senior Principal Magistrates Court in Narok.

The notice of motion dated 10th December 2012 is therefore dismissed with no order to costs.

Dated, signed and delivered this 19th day of April 2013.

**L N WAITHAKA
JUDGE**

PRESENT

.....**APPLICANT**

..... **RESPONDENT**

.....**CC**