

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. CIVIL APPLICATION CASE NO. 87 OF 2013

MACKINNON SOITA.....APPLICANT

VERSUS

JOYCE ASWANI SIMIYU..... 1ST RESPONDENT

JOSEPH SIMIYU2ND RESPONDENT

WILLIAM SIMIYU..... 3RD RESPONDENT

RULING

The applicant seeks to transfer Bungoma CMCC No. 2 of 2013 to this court for its hearing and determination. The application is opposed. The main reason for opposing this application is technically the subject matter sought to be stopped from happening has taken place to wit a burial.

I will not get into merits or otherwise of the suit in the lower court in terms of whether the subject matter has taken place. However I will decide this application on its merits and based on the practice directions issued by the Chief Justice as regards the determination of land cases.

The Chief Justice pursuant to the provisions of section 24(2) of the Environment and Land Court Act, issued practice directions for matters pending before the Environment & Land court issued on 9th November 2012 at paragraph 7 provides thus;

“Magistrates courts shall continue to hear and determine all cases relating to the environment and the use and occupation of land, (whether pending or new) in which the courts have the requisite pecuniary jurisdiction.”

In the instant application, it has not been indicated if the value of the land in question exceeds the pecuniary jurisdiction of the Chief Magistrate's court. Until the contrary information is given, I do not see the need to transfer the suit from the Magistrate's court to the High Court for trial and determination.

The validity or otherwise of the practice directions was brought up in the petition No. 72 of 2013 between **Edward Mwaniki Gaturu & Ano. Vs. A.G & 3 others [2013] e KLR**. Although this decision is persuasive on me, I do not see any reason to hold otherwise. Lenaola J. held that the Chief Justice acted within the provisions of Section 24 (2) of the Environment & Land Court Act. I therefore hold that the law as it has not taken jurisdiction from the subordinate courts to hear such cases. As put by Lenaola J. in the above case, this court has original and appellate jurisdiction in accordance with article 162 (2) of The Constitution. This court can only exercise appellate jurisdiction from the decisions of the courts below. These decisions would be unavailable unless the subordinate court hears matters. Consequently I disallow the application with no order on costs.

RULING DATED, SIGNED, READ and DELIVERED in open court this 25th day of September 2013.

A.OMOLLO

JUDGE.