



REPUBLIC OF KENYA

High Court at Kisumu

Miscellaneous Application 215 of 2012

VINCENT AYIEKO CHIAGA.....APPLICANT

VERSUS

JOSEPH OYOO.....RESPONDENT

RULING

The notice of motion dated 19-9-2012 seeks to have the proceedings in Kisumu CMCC No. 139 of 2012 transferred to this court. The said application is supported by the affidavit of **Vincent Ayieko Chiaga** sworn on 19-9-2012.

The substance of the application is based on the Gazette Notice No. 1617 which enacted the Land and Environment Court. The application is opposed by the respondent on the grounds that the matter cannot be transferred to the High Court as the lower court in any event does not have jurisdiction to try it. The grounds of opposition dated 24-9-2012 further argues that the provisions of section 165 (2), (5) of the Kenya Constitution does not apply.

On 9-2-2012 the honourable Chief Justice issued the “**practice directions on proceedings relating to the Environment and the use and occupation of Land and title to land**”.

In exercise of the powers conferred by the Sixth Schedule Part 5 section 22 of the Constitution of Kenya, 2010 and in pursuance of section 30 (1) and (2) of the Environmental and Land Court Act (No. 19 of 2011) of the Laws of Kenya on transitional provisions for proceedings relating to the environment and the uses and occupation of and title to land as read with section 31 of the Act the chief justice makes the following practice directions following the establishment of the Environment and Land Court:

- 1. All proceedings relating to the environment and the use and occupation of, and title to land pending before the court of appeal shall continue to be heard and determined by the same court.**
- 2. All pending judgments arising out of proceedings relating to the environment and the use and occupation of, and title to land pending before the high court shall be delivered by the same court.**
- 3. All part-heard cases relating to the environment and the use and occupation of, and title to land pending before the high court shall continue to be heard by the same court.**
- 4. All cases relating to the environment and the use and occupation of, and title to land which have hitherto been filed at the high court and where hearing in relation thereto has yet to commence, shall be transferred to the Environment and Land Court as directed by the Chief Registrar.**
- 5. All proceedings which were pending before the resident magistrate's court having been**

transferred thereto from the now defunct District land Disputes Tribunals shall continue to be heard and determined by the same courts.

6. All new cases relating to the environment and the use and occupation of and title to land shall be filed in the nearest Environment and Land court for hearing and determination by the said court.

These practice directions supersede the directions issued on the 9th February, 2012 vide Gazette Notice No. 1617.

From the above direction it is my considered opinion that the matters filed and pending at the lower court like the case at hand which the applicant is seeking to transfer does not enjoy this alternatives.

In other words the lower court can hear the same **provided** that it has the jurisdiction to determine. As it were this matter has been filed and is yet to be heard. It would be difficult for this court to transfer the same as it is not aware whether the trial court is seized of jurisdiction or not. It is only that court which is capable of determining.

This court cannot interfere by transferring a suit which the lower court did not have jurisdiction in the first instance.

The directions therefore by the Chief Justice are very clear on how the fresh or pending land and environmental matters ought to be handled by the various courts.

However, to grant a lifeline to the applicant I shall stay this application with the liberty to the applicant or the respondent to apply to the land and environment court for the relevant orders as and when it is constituted here at the Kisumu High Court.

I am aware that a registry has been established but hopefully the relevant authorities shall send the personnel to manage the court. The application is otherwise stayed. No orders as to costs.

Dated, signed and delivered at Kisumu this 15th day of October 2012

**H.K. CHEMITEI
JUDGE**

In the presence of:

S. M. Onyango for Madialo for the applicant

Omondi for the respondent

HKC/va