



REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CIVIL MISC. NO.22 'B' OF 2002

PETER MAYEKU KHISA.....APPLICANT
VRS

GODFREY MASIBO.....RESPONDENT

RULING

The Applicant Peter Mayeku Khisa in his application dated 23/11/2001 brought under section 18 of the Civil Procedure Act seeks for transfer of Bungoma PMCC NO.587 of 1991 to High Court Bungoma for hearing and final disposal. The grounds relied on are that the Chief Magistrate Court lacks jurisdiction to grant the orders sought. The facts leading to this application are that the Respondent Geoffrey Masibo sued the Applicant's father in Kakamega HCCC NO.20 of 1984 claiming title to land parcel no.Kimilili/Kimilili/360 as a purchaser for valuable consideration. The claim was denied by the Applicant's father who died before the suit was heard and determined. The Applicant was substituted as the Defendant in the suit. The suit was then transferred from Kakamega to Bungoma Court and registered as PMCC No.587 of 1991. On 11/11/1993 the suit was heard and judgment delivered in favour of the Applicant on the 2/12/1993. The said order was later vacated by the court. The Applicant now wants the suit to be heard by the High Court because the lower court lacks jurisdiction.

The application was opposed by the Respondent on grounds that the suit PMCC NO.587 of 1991 has been heard and finally determined and it is therefore incapable of being transferred to the High Court. It is the respondent's contention that after the court set aside the ex parte judgment which was in favour of the Applicant the matter was referred to the land disputes tribunal. The Kimilili LTD arbitrated over the matter and made an award which was adopted as judgment of the court vide KML Land Case No.21 of 1997. The Applicant did not appeal against the award of the tribunal and it is now too late to revive the suit which has been concluded.

In regard to the number of the Kakamega suit the applicant cleared the issue in his affidavit that the correct number is Kakamega HCCC NO.20/1984.

I have considered the arguments of the parties in this application and perused PM CC NO.587/1991. In the plaint the following orders are sought:

- a) **A declaration that Kimilili/Kimilili/1185 measuring 5 acres belongs to the Plaintiff**
- b) **The Defendant be ordered to specifically perform his part of the contract in signing the transfer forms in respect of Kimilili/Kimilili/1185.**

The Respondent argues that the matter was heard and determined by the tribunal and that there is no suit pending in that regard. The Land disputes Tribunal has no jurisdiction to deal with matters relating to title. The jurisdiction in such matters is vested in courts. I agree with the Applicant that the tribunal

lacked jurisdiction to deal with issues raised in PM CC NO.587 of 1991. Any award made by the tribunal without jurisdiction is null and void for all intents and purposes. It does not matter whether or not the award was challenged by any of the parties. Neither does it matter that the award was not set aside by a court of competent jurisdiction. It remains an order which can not be legally be enforced. The Chief Magistrate's court has no jurisdiction make declaratory orders as sought in the plaint. Such jurisdiction is vested in the superior court. It follows that the suit cannot be heard and determined in that court. It is therefore necessary that the suit PMCC NO.587/1991 be heard and determined by a competent court. For that reason, I allow the application as prayed. The suit is hereby transferred to Bungoma High Court for hearing and determination. Costs of this application to be in the cause.

F. N. MUCHEMI
JUDGE

Ruling dated and delivered this 10th day of May 2011 in the presence of Mr. Murunga for the Respondent and Mr Masinde for the Applicant.

F. N. MUCHEMI
JUDGE