



IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CIV. NO. 141 OF 2011

MARTHA KABON CHEBII.....APPLICANT

VERSUS

JOSHUA KIPTUM CHEBURET.....RESPONDENT

RULING

By the Notice of Motion dated 28/4/2011, the applicant, Martha Chebii and Henry Kibet Chebii seek an order of stay of the proceedings in Eldama Ravine RMCC. 87/2010 pending hearing and determination of this application and that the said suit be transferred to the High Court, Nakuru for hearing and final determination. The grounds upon which the application is premised are inter alia that the value of the suit property is over Kshs.4 million and hence above the jurisdiction of that court. It is deponed that the suit in Eldama Ravine is defended and filed therein is a Chamber Summons seeking an order of injunction to secure the property. Despite the court's order the respondent did not stop construction on the suit land which prompted the filing of this case in February 2011. In the further affidavit, it was deponed that at the time of filing the suit in Eldama Ravine, it was worth only Kshs.17,000/- the price of the plot.

In opposing the application, counsel for the respondent, Mr. Ogola swore an affidavit dated 2/6/2011, in which he deponed that after the suit was filed in Eldama Ravine, he filed a defence on 24/12/2010 in which jurisdiction was denied (GO1) and on 24/12/2010, he served the plaintiff with a notice of preliminary objection (GO2 and GO3); That the purpose of this application is to defeat the defendant's preliminary objection and that since the court had no jurisdiction ab initio, there is nothing to transfer to another court.

I have seen the receipt exhibited by the applicant reflecting the price for which the plot was purchased i.e. Kshs.17,270/-. The plot was purchased on 4/7/1997. The suit was filed on 1/12/2010, 13 years after the purchase. The plot should have been valued as of 1/12/2010 when the suit was filed. The value must have gone up tremendously as of December 2010. Since the monetary jurisdiction of the trial court is Kshs.25,000/-, it follows that the court in Eldama Ravine did not have jurisdiction to deal with the matter.

In the case of **Owners of Motor Vessel "LILIAN"s V. Caltex Oil Kenya Ltd (1989) KLR at pg 14**, J. Nyarangi delivered himself on the issue of jurisdiction as follows:-

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

Ag pg 15, **“it is for that reason that a question of jurisdiction once raised by a party or by a court on its motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. A scanty or limited facts demonstrate the evidence before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined.”**

In the instant case, the defendant raised the issue of jurisdiction in the defence and filed a preliminary objection even before the matter could be heard. The Eldama Ravine Court has no jurisdiction in the matter before it and could not therefore touch it. It had no power to make any orders in that case so there was no case before it at all and I will agree with the defendant that there is nothing for this court to transfer from Eldama Ravine to this court. Further to the above, Eldama Ravine falls within the territorial jurisdiction of Eldoret High Court and it is at the Eldoret High Court that the application should have been made. (See Gazette Notice No. 1756 of 27/2/2009).

For the above reasons the application is dismissed with costs to the respondent.

DATED and DELIVERED this 18th day of November, 2011.

R.P.V. WENDOH
JUDGE

PRESENT:

N/A for the applicant.

Mr. Keya holding brief for Mr. Ogola for the respondent.

Kennedy – Court Clerk.