



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 588 of 2005

JOHN MUVOO TSUMA PLAINTIFF

VERSUS

MOSES CHAI & 23 OTHERS DEFENDANTS

RULING

Application to transfer suit to High Court of

Kenya at Mombasa 29 September, 2006

I: Civil Practice and Procedure

1. John Mvoo Tsuma (plaintiff herein) alleges that he is the correct registered owner of Land parcel Kilifi/Chilulu 31,32,91, 315, 360, 401, 402, 403, 404, 405, 32, 315, 360, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411,412,413,414,415, 416, 417, 418,419, 420, 469,476, 471, 499, 500, 501,504.

2. The said land is now occupied by trespassers being defendant 1 to 24 as described in the plaint. His prayers are that they are trespassers and he seeks their eviction from the land.

3. This suit was accordingly filed on 17 May, 2005 at the Central Registry of the High Court of Kenya at Nairobi. The defendants entered appearance as follows:-

i) Defendants No.3,4,5,6,7,8,& 9 represented by M/s Tindika & Co Advocate Mombasa.

ii) Defendant No. 2 Murima & Co

Advocate.

iii) Defendant No.11,14,15,16,17,19,21 & 22 represented by Gungu Mwingi & Co advocates Mombasa

iii) Defendants 1,10, 12,13,18 & 20 are

unrepresented

4. A defense was entered into on behalf of the defendants represented by their respective advocates on

application to struck out the defense was filed. This was the application dated 8 August 2005. It has never heard. On 6 June, 2007 when it was set down for hearing the application was taken out on the ground that defendant 2, 10 & 16 had passed away and the advocate representing 16 defendants wished to have them substituted. The application was subsequently withdrawn to allow the said deceased be substituted.

5. Parties appeared before Kubo J except for M/s Gunga Muga. The trial Judge took out the matter from the list after noting that there had been no substitution of parties deceased, including further defendant 3,4,6 and 9 (with deceased 9 being buried on 26. January, 2008). The other issue that arose was that the place of hearing required to be determined first.

II Application 29 September, 2006

5. Mr. Tundika held brief for M/s Gunga Mwinga and Co Advocates. It was nonetheless his application whereby he sought for orders that:-

“This suit be transferred to the

High Court of Kenya at Mombasa

for trial and disposal thereof”

7. The said application was bought under section 3A 12 &15 of the Civil Procedure Act Cap 21 Laws of Kenya. I shall deal with these sections later below.

8. The grounds being that the subject matter being land is located in the Kilifi District. Thus the High Court of Mombasa should hear this matter.

9. The plaintiff actually alleged that there is a High Court of Kenya in Malindi that is closer. Nonetheless the reasons the suit was filed in the High Court of Kenya at Nairobi was due to the threats that was made against the said plaintiff by the defendants.

II Opinion

10. The Civil Procedure Act permits a transfer of cases between the High Court and the subordinate Court or between one subordinate court to the other. This is under section 18 of the Civil Procedure Act. The applicant rightly did not come under this section but instead used section 3A, 12 & 15 of the Civil Procedure Act.

11. Section 3A deals with the inherent powers of the court whilst section 12 deals with the filing of suit to be so instituted where the subject matter is situated. The defendants state that this matter ought to have been filed in Mombasa where the subject matter is situated.

12. They further relied on section 15 of the Civil Procedure Act to prove this and the rules under Order 4b r5 (2) whereby the

"Court of its own motion on application may order for a case to be heard in a particular place to be approved by the court"

"Proviso....."

13. The High Court of Kenya is one you cannot therefore transfer one case from one High Court to the other. There is no provision for this in the rules to do this. The only opportunity that

the rules provided for was that of Summons for Directions in form 26 Civil Procedure Rules where the time and place of hearing would be ordered by the Hon. Judge and or Deputy Registrar. These rules have since been repealed.

14. Section 15 on the other hand does not apply to the High Court. It applies to the cases before the subordinate court. The High Court are not bound to have matter filed according to section 15. The High Court have unlimited jurisdiction to hear any suit at any place, time for suits involving the state.

15. I rely on the case law of:-

Riddlesberge & Another

V

Robson (1958) EA 375

O'connor P, Briggs V-P ,Forbes J-A

touching on section 15 Civil Procedure Act.

16. I was informed by the defendants advocate that it would be a long distant for the defendants to travel. This is a civil matter. Defendants need not attend court and are represented by their advocates.

17. I decline to grant this application and accordingly dismiss the some with costs to the plaintiffs

DATED THIS 15TH DAY OF APRIL 2008 AT NAIROBI.

M . A. ANG'AWA

JUDGE

A.M.D. Enonda instructed by Enonda Makollo Makori & Co. Advocates for the plaintiff- present

J.W. Kungu instructed by Madzayo Mrima & Co. Advocates for 2nd defendant – present

J.W. Kungu hodling brief for Tindika, for 3-9 defendants (absent)

Gunda Mwinga & Advocates for for 11th, 14th – 22nd defendants – absent