



**Kemboi v Muzee (Environment & Land Miscellaneous Case
E002 of 2022) [2022] KEELC 13603 (KLR) (12 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13603 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND MISCELLANEOUS CASE E002 OF 2022**

**MN MWANYALE, J
OCTOBER 12, 2022**

BETWEEN

CHARLES KIBET KEMBOI PLAINTIFF

AND

KIPKERING ARAP MUZEE DEFENDANT

RULING

1. The Notice of Motion for consideration before this Court, is the one dated 5th April 2022, which seeks orders that Kapsabet Chief Magistrates Environment and Land Court case No. 6 of 2019 be transferred to this Court for hearing and determination and that upon such transfer, the suit be consolidated with Kapsabet Environment and Land Case No. 102 of 2021 (O.S).
2. The application is based on grounds inter alia,
 - a. That the suit in Kapsabet Chief Magistrate Land case No. 6 of 2019 related to trespass
 - b. The suit in Kapsabet ELC No. 102 of 2021 relates to adverse possession.
 - c. The subordinate Court lacks jurisdiction to deal with issues of adverse possession.
 - d. The issues in the two (2) cases relate to and reference Nandi/cheptil/259
 - e. The two cases ought to be handled by the same Court and heard concurrently to avoid conflicting decisions on the same dispute.
 - f. There is need to transfer the matter in the subordinate Court to this Court for hearing and determination.
3. The Application is further supported by the Supporting Affidavit of Mr. Elijah Momanyi Advocate for the Plaintiff.



4. In the said affidavit, Mr. Momanyi deposes interalia paragraph 4 that the subordinate Court lacks jurisdiction to handle a claim based on trespass, thus the need to transfer the case to this Court for hearing and determination.
5. The affidavit has also annexed copies of the pleadings in the two suits that are sought to be consolidated, upon transfer of Kapsabet CM Land case No. 6/2019.
6. On the strength of the said grounds and depositions.
7. The Application is opposed by the Replying Affidavit of the Respondent Kipkering arap Muzee who depones interalia.
 - i. That there was an order of stay of proceedings in ELC No. 102/2021 pending hearing and determination of Kapsabet CM land case No. 6 of 2019.
8. The Respondent further depones that the Applicant has applied all delay tactics to frustrate the hearing of Kapsabet Chief Magistrates Land case No. 6 of 2019.
9. For those reasons, the Respondent prays that the Application be dismissed with costs.
10. Parties were directed to file written submissions and mention dated fixed to confirm compliance. Only the Applicant had filed submissions. The Respondent did not file submission despite evidence of service of mention notice for them to confirm compliance.

On 26/7/2022 when the matter was mentioned, Mr. Songok for the Respondent was absent and a mention date for 29/7/2022 was fixed and Mr. Songok was equally absent and the Court thus reserved the ruling for 28/9/2022, but on the said date the Court did not sit.
11. I have carefully analysed and considered the application before me. The main ground for the transfer of Kapsabet CM Land case No. 6 of 2019 is that the subordinate Court does not have jurisdiction to hear and determine a trespass matter, as deponed in paragraph 4 of the Supporting Affidavit.
12. This is according to the deposition of Mr. Momanyi Advocate. In his submissions Mr. Momanyi Advocate submits that the matter in dispute and issues herein as well as the parties are the same. Hence submits the suits should be consolidated.
13. Consolidation of two suits would be granted where issues and the parties are the same like in this case, but where also the suit are in before the same Court. In this case however one suit is before the Chief Magistrates Court and the other suit is before this Court. Hence for consolidation to be granted, it has to be shown that the Subordinate Court does not have jurisdiction to hear and determine that suit. The Plaint in case No. 6 of 2019 seeks for eviction and it is based on trespass.
14. The deposition by Mr. Momanyi that the Subordinate Court does not have jurisdiction to hear and determine a trespass suit is misleading.
15. On the strength that Kapsabet Chief Magistrate Environment and Land Case No. 102 of 2021, this Court on 30/11/2021, stayed case No. 102 of 2021, pending hearing and determination of case No. ELC 6 of 2019. This fact was revealed by the Respondent, and upon perusal of the Court file the Court has indeed found the stay of proceedings orders to be in force.
16. Having found that the Subordinate Court has jurisdiction to hear and determine a trespass suit. Which was main ground for this application therefore fails, and there is therefore no basis upon which to transfer Kapsabet Environment and Land case No. 6 of 2019 for hearing and determination before this Court.



17. The fear that the Courts may give contradicting judgments is equally misplaced as one suit ELC No. 102/2021 had been stayed pending determination of Kapsabet Environment and Land Case No. 6 OF 2019.
18. In the upshot, I find no merit in the application before Court and the same is dismissed with costs. For clarity purposes, Kapsabet Environment and Land case No. 102 of 2021 before this Court remains stayed pending hearing and determination of Kapsabet Chief Magistrate Court Case No. 6 of 2019; which I direct be heard and disposed of expeditiously.
19. Orders accordingly.

DATED AND DELIVERED IN KAPSABET THIS 12TH DAY OF OCTOBER, 2022.

HON. M. N. MWANYALE,

JUDGE

In the presence of;

Mr. Songok for the Respondent

Mr. Momanyi for the Applicant

