



**Kaptingei v Kerich (Environment & Land Case 36 of 2018)  
[2022] KEELC 15191 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15191 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 36 OF 2018  
EO OBAGA, J  
NOVEMBER 24, 2022**

**BETWEEN**

**STANLEY KAPTINGEI ..... PLAINTIFF**

**AND**

**SAMUEL KIBIWOTT KERICH ..... DEFENDANT**

**RULING**

1. This is a ruling in respect of notice of motion dated August 5, 2022 in which the defendant/applicant seeks to have this case transferred to the Chief Magistrate's Court, Eldoret on the ground that the suit property is valued at Kshs 4,000,000/= which is within the monetary jurisdiction of the Chief Magistrate's Court.
2. The applicant contends that the dispute between him and the plaintiff/respondent is over LR No Kapsaret/Kapsaret Block 1 (Marama)/11 measuring 0.8 hectares. The applicant states that this property is valued at Kshs 4,000,000/= which is within the monetary jurisdiction of the Chief Magistrate's court.
3. The applicant argues that the monetary jurisdiction of this court relates to matters whose monetary value is over Kshs 20,000, 000/= and therefore should transfer this matter to the Chief Magistrate's Court. In a further affidavit sworn on October 24, 2022, the applicant contends that he became aware of the value of the suit property upon getting a valuation report on July 21, 2022. He states that prior to this date, he did not know of the value of the suit property.
4. The applicant goes on to argue that this court cannot clothe itself with jurisdiction which it does not have and that he had a right to change advocates as he wished and is not out to delay this matter.
5. The respondent opposed the applicant's application based on a replying affidavit sworn on October 18, 2022. The respondent contends that the applicant's application is frivolous, vexatious and is an abuse of the process of the court. The respondent states that he filed this suit in 2018. The suit proceeded



- and his case closed but the applicant filed an application seeking to re-open the case. The applicant's application was allowed. The respondent testified and closed his case and the applicant was given a date for defence hearing but instead of proceeding with the defence hearing, he embarked on filing applications.
6. The respondent states that the applicant knew of the case he was facing but that he is only out to delay this case. The respondent argues that if this suit were to be transferred to the Chief Magistrates Court, it will start *de novo* hence causing further delay.
  7. I have carefully considered the applicant's application as well as the opposition to the same by the respondent. I have also considered the submissions filed by parties though there were no directions as to the filing of submissions as the application was heard orally. The only issue for determination in this matter is whether this file should be transferred to the Chief Magistrate's Court.
  8. This case was filed on February 18, 2018. The subject matter of the suit property was LR No Kapsaret/Kapsaret Block 1 (Marama) 11 measuring 8.64 hectares which is equivalent to about 21 acres. The plaint was subsequently amended and filed on July 18, 2018. The applicant amended his defence which was filed on July 23, 2018. Agreed issues were filed on November 29, 2018.
  9. The hearing proceeded on January 20, 2020 until the Plaintiff closed his case. Defence hearing was set down for March 2, 2020. On March 2, 2020, the file was placed aside until 11:00 am. When the matter was called out for hearing at 11:00 am neither the defendant nor his counsel were in court. The court directed that the defence case had been closed and directed parties to file written submissions.
  10. The applicant later filed an application seeking to set aside the proceedings which led to closure of the defence case. The respondent's counsel conceded to the application so as to fast-track the conclusion of the case. Defence case was fixed for February 25, 2021. On February 25, 2021, the applicant's counsel indicated that he was no longer representing the applicant. The court adjourned the case and gave it June 15, 2021 for defence hearing.
  11. The applicant thereafter appointed a new advocate who filed an application to have this case consolidated with ELC No 11 of 2018 (Abel Kigen Maritim v Stanley Kaptungei and Christopher Mely). This application was dismissed on April 20, 2022. The applicant thereafter filed the present application.
  12. A look at the valuation report which is annexed to the further affidavit of the applicant shows that the suit property which was valued is LR No Kapsaret/Kapsaret Block 1 (Marama)/11 measuring 0.8 hectares. This is not the property which is subject of this suit. The subject matter of this suit is LR Kapsaret/Kapsaret Block 1 (Marama)11 which is equivalent to 21 acres. This property cannot be said to be valued at Kshs 4,000,000/= unless the applicant is saying that the property was subdivided and even then the numbers could not remain the same upon subdivision.
  13. The valuation report annexed to the applicant's further affidavit was requested by one Abel Kigen Maritim and not the respondent herein. This case has been in court for over four years. It is partly heard before this court. It is only remaining for defence hearing. Section 1A of the Civil Procedure Act provides for the overriding objective of the act in the following terms: "the overriding objective of this act and the rules made thereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the act".
  14. It is clear from the conduct of the applicant that he is out to delay this matter for as long as possible. The issue of jurisdiction has been brought to cause confusion in this matter. There is no merit in this application which is hereby dismissed with costs to the respondent.



It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 24TH DAY OF NOVEMBER, 2022.**

**E O OBAGA**

**JUDGE**

In the virtual presence of;

Ms. Kesei for defendant/applicant.

Mr. Kigen for Plaintiff/Respondent

Court Assistant –Albert

**E. O. OBAGA**

**JUDGE**

