



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC MISCELLANEOUS APPLICATION CASE NO. 20 OF 2020**

**JAMES OTIENO OYUGI.....APPLICANT**

**VERSUS**

**DANIEL ABURA JUMA (Suing as administrator of the**

**Estate of the late AMOS JUMA ABELO alias MALOWA ABURA.....1<sup>ST</sup> RESPONDENT**

**ROSE ABURA.....2<sup>ND</sup> RESPONDENT**

**RULING**

James Otieno Oyugi (hereinafter referred to as the applicant) has come to court against Daniel Abura Juma suing as administrator of the Estate of the late Amos Juma Abelos alias Malowa Abura and Rose Abura hereinafter referred to as the Respondents for orders that this honourable court be pleased to withdraw PMCC case No. 6 of 2020 Daniel Abura Juma suing as administrator of the estate of the late Juma Abelos alias Malowa Abura versus Rose Abura and James Otieno Oyugi.

The application is based on grounds that the pecuniary jurisdiction of the Principal Magistrate court at Bondo and of the Magistrate is way below the actual value of the suit property. The actual value of the suit property is far in excess of Kshs. 20,000,000/- while the forced sale value thereof is Kshs. 15,400,000/.

It follows therefore that the Principal Magistrate court at Bondo therefore lacks pecuniary jurisdiction to hear and determine the said suit. The only court that has the jurisdiction to hear and determine the said suit is this honourable court. In the premises, it is only fair and just that this honourable court withdraws the said suit from the principal magistrate court at Bondo, transfers it to itself and thereafter proceed to hear and dispose of the same.

The application is based on the affidavit of James Otieno Oyugi who states that he is the registered proprietor of the suit property and that there is a case pending in the Principal Magistrate Court Bondo in ELC No. 6 of 2020 seeking cancellation of the title. The value of the said property is for in excess of Kshs. 20,000,000/- while the parcel value thereof is Kshs. 15,400,000/-. The Principal Magistrates court Bondo therefore lacks jurisdiction to hear and determine the matter. The only court that has jurisdiction is this court.

The Respondent filed grounds of opposition that the Principal Magistrates Court Bondo has pecuniary jurisdiction of Kshs 10 million. The value of the property in dispute is 1.5 million. The subject matter is within the jurisdiction of Bondo Principal Magistrates court.

The applicant submits that the actual value of the subject matter is Kshs. 20,000,000/-. The fraud value is Kshs. 15,400,000. It exceeds the jurisdiction of the Principal Magistrates court Bondo. The applicant states that the value of land includes the fixtures.

I have considered the application and do find that the report and valuation made by Tyson's Ltd signed by K.K. Ogora, B. Real Estates G.M.I.S.K and S.O. Omayo B. A dated 4/6/2020 put the value of the land without improvements at Kshs 1,500,000/- and the value of buildings and site works at Kshs 13,900,000/-. It is trite law that the value of land includes the improvements on the same and therefore the preliminary evidence on record is that the property is valued at more than 10,000,000 though the same has not been tested by the court and that there is no other report prepared by an expert valuer shown to court. I do find that the applicant has demonstrated that the value of the property is Kshs. 15,400,000. The pecuniary jurisdiction of the Principal Magistrate Bondo is Kshs. 10,000,000.

The upshot of the above is that the Principal Magistrates Court Bondo lacks jurisdiction to entertain the matter. The same is hereby transferred to Kisumu Environment and Land Court for hearing and determination. Costs of the application in the cause.

**DATED AT KISUMU THIS 19<sup>TH</sup> DAY OF MARCH, 2021**

**ANTONY OMBWAYO**

**JUDGE**

**This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2019.**

**ANTONY OMBWAYO**

**JUDGE**