



Shirandula & another v Rugut (Environment and Land Miscellaneous Application E002 of 2023) [2024] KEELC 3502 (KLR) (2 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3502 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E002 OF 2023
DO OHUNGO, J
MAY 2, 2024**

BETWEEN

JESCA INYANJE SHIRANDULA 1ST APPLICANT

SHISAMBULA SHIUNDU 2ND APPLICANT

AND

MUSA KIMARU RUGUT RESPONDENT

RULING

1. The applicants moved the court through Notice of Motion dated 2nd August 2023, seeking transfer of Butali MCELC No. E030 of 2021 (OS) to Chief Magistrate's Court Kakamega for consolidation with Kakamega CM Misc. Application No. 31 of 2019 and hearing and determination. The application is based on the grounds listed on its face and is supported by a supporting affidavit and further affidavit, both sworn by the first applicant.
2. The first applicant deposed that she is one of the plaintiffs in Butali MCELC No. E030 of 2021 (OS) and that she is the applicant in Kakamega CM Misc. Application No. 31 of 2019. She added that the two matters are related and that she would like to have them consolidated to avoid conflicting decisions. She annexed a copy of the originating summons in Butali MCELC No. E030 of 2021 (OS) and proceedings in Provincial Land Dispute Appeals Tribunal Case No. 82 of 2003.
3. The application was canvassed through written submissions. Although the respondent attended court severally and was given opportunities to file a replying affidavit and submissions, he did not file any.
4. The applicant argued that both matters concern the same parcel and that it is prudent and in the interest of justice to have them consolidated to avoid duplicity.
5. I have considered the application, the affidavits, and the submissions. A perusal of the annexed documents shows that the applicants herein are second and first applicants in Butali MCELC No.



E030 of 2021 (OS) while the respondent herein is also a respondent in the matter. The matter has two other applicants who have not been made parties to this application. The applicants in the matter claim to have become entitled to the parcel of land known as Kakamega/Chemuche/354 through adverse possession.

6. The applicants herein have not annexed any pleadings filed in Kakamega CM Misc. Application No. 31 of 2019. It is possible that Kakamega CM Misc. Application No. 31 of 2019 is an application for adoption of an award by the Land Disputes Tribunal. A perusal of the proceedings annexed by the applicants shows that the subject matter of the tribunal case was Kakamega/Chemuche/354.
7. The applicants' reason for seeking transfer is that the two matters are related and that they would like to have them consolidated to avoid conflicting decisions. Whereas the suit property in the two matters may be common, the claims are founded on very distinct facts and law. One is adverse possession while the other is grounded on the *Land Disputes Tribunals Act*, 1990 (repealed). In those circumstances, I do not think it would be advisable to consolidate the matters. Equally, I do not see any possibility of conflict of decisions since the claims are founded on different branches of the law. It is the duty of the parties to appraise respective courts of any orders made in the matters and the courts will make considered decisions.
8. I find no merit in Notice of Motion dated 2nd August 2023, and I therefore dismiss it. Considering that the respondent neither filed a response nor submissions, I make no order on costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 2ND DAY OF MAY 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the Applicants

The Respondent present in person

Court Assistant: M Nguyayi

