



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. MISC. APPLN. NO. 20 OF 2020

ALEXANDER MUEMA MUTHENGI.....APPLICANT

VERSUS

AGRICULTURE SYNDICATE LIMITED.....1ST RESPONDENT

GIMU DEVELOPMENT CO. LTD.....2ND RESPONDENT

FRANCIS MBURU.....3RD RESPONDENT

RULING

1. In the Notice of Motion dated 14th June, 2020, the Applicant has prayed for the following orders:

a. That CMCC No. 136 of 2019 filed by Agriculture Syndicate Limited against Gimu Development Co. Limited be and is hereby transferred to the Environment and Land court at Machakos for hearing and determination.

b. That leave be and is hereby granted for Alexander Muema Muthengi to be enjoined as the 2nd Defendant, upon transfers of CMCC No. 136 of 2019 to this Honourable Court.

c. That the costs of this Application be provided for.

2. The Application is supported by the Affidavit of the Applicant who has deponed that he is a former director of the 2nd Respondent, Gimu Development Co. Limited; that he entered into a separation Agreement with the 2nd Respondent on 26th May, 2016 and that the Agreement allowed him to join in this suit to protect his interest.

3. According to the Applicant, the subject matter of this suit is beyond the pecuniary jurisdiction of the lower court; that one of the prayers in the Counter-claim is specific performance vide a transfer of 25 acres of the suit property L.R. No. 10426/28 to the Defendant and that the matter ought to be transferred to this court for hearing and determination.

4. In reply, the 3rd Respondent deponed that no reason exists to transfer the matter to this court because the dispute is not over land but a matter of contract; that the Applicant is a stranger to the proceedings and was not privy to any contract between the 1st Defendant and the 2nd Defendant and that this court does not have jurisdiction to handle this matter.

5. In his Further Affidavit, the Plaintiff deponed that the origin of the suit is the sale of 100 acres of L.R. No. 104262/3 and 10426/8 and that the valuation reports have been annexed to guide the court.

6. In his submissions, the Applicant's advocate submitted that this court is entitled to join the Applicant in these proceedings; that the Applicant has demonstrated that the 2nd Respondent has been lethargic in prosecuting the matter and that the Applicant has shown that he has an identifiable interest in the proceedings.

7. The Applicant's counsel submitted that the lower court does not have jurisdiction to handle the case because of its pecuniary jurisdiction and that the matter in the lower court should be transferred to this court.

8. On the other hand, the Respondents' advocate submitted that this court lacks jurisdiction to determine the issue of joinder when it is not seized of the matter; that the proposed Defendant was not privy to the contract which is the subject of the suit in the lower court and that this court does not have jurisdiction to handle the dispute in the lower court.

9. This matter was commenced by way of Miscellaneous Application dated 14th June, 2020 which is the subject of this Ruling. The Applicant is seeking for two substantive prayers, firstly, that CMCC No. 136 of 2019 filed by the 1st Respondent herein against the 2nd Respondent should be transferred to this court, and secondly, that he should be granted leave to be enjoined as the 2nd Defendant upon the transfer of CMCC No. 136 of 2019 to this court.

10. Although the Applicant is seeking for an order to transfer the suit in the lower court to this court, he is not yet a party in the lower court matter. If the Applicant is not yet a party to CMCC No. 136 of 2019, how do I enjoin him in that suit when the suit is not before me?

11. The issue of whether the Applicant should be a party in the suit in the lower court should be filed in that file. It is only after being allowed in the suit in the lower court that the Applicant can move this court appropriately in respect to the said suit. The Application for joinder therefore fails on that ground alone.

12. In any event, the Applicant has annexed an Application dated 2nd May, 2020 which he filed in CMCC No. 136 of 2019. One of the prayers in that Application is for him to be joined in the suit as the 2nd Defendant. However, he chose to withdraw the Application.

13. The proper thing for the Applicant would have been to argue the issue of joinder in the lower court, and once allowed on board, plead that the lower court does not have jurisdiction to deal with the dispute. He did not do that but chose to file the current Motion.

14. Having not joined the suit in the lower court as a party, the prayer for the transfer of the suit from the lower court to this court cannot succeed. I say so because the Applicant does not have the *locus standi* to move a matter in which he is not a party. It is only the parties in that suit that can move this court in respect to any matter touching on the suit and not the Applicant, who is a stranger.

15. In the circumstances, and without going into the merits of whether the Applicant can be enjoined as a Defendant in Machakos CMCC No. 136 of 2016 or whether the said suit can or should be transferred to this court or not, it is my finding that the Notice of Motion dated 14th June, 2020 is bad in law.

16. In the circumstances, the Applicant's suit which was commenced by way of a Notice of Motion dated 14th June, 2020 is struck out with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 30TH DAY OF APRIL, 2021.

O. A. ANGOTE

JUDGE