



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYAHURURU

ELC MISC APP. NO E001 OF 2021

ETHICS AND ANTI-CORRUPTION COMMISSION.....APPLICANT

VERSUS

SOLOMON LEMPERE.....1ST RESPONDENT

KENYA WILDLIFE SERVICE.....2ND RESPONDENT

THE COUNTY GOVERNMENT OF SAMBURU.....3RD RESPONDENT

RULING

1. By a notice of motion dated 27th January, 2021 based upon **Sections 18 and 3A of the Civil Procedure Act (Cap. 21)** the Applicant sought an order for transfer of *SPMCC No. 3 of 2019 – Solomon Lempere v Kenya Wildlife Service (KWS) & Others* from Maralal Law Courts (*the trial Court*) to this court for trial and disposal.

2. The Application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by James Mokua on 27th January, 2021 and the exhibits thereto. The Applicant contended that the property in dispute measured approximately 88 acres whose value exceeded the pecuniary jurisdiction of the trial court. The Applicant relied upon a valuation report which indicated that the entire land claimed by KWS was valued at Kshs 380 million.

3. The Applicant further contended that the suit between the Plaintiff and the Defendant before the trial court raised weighty legal issues which are better handled by this court and not the subordinate court. It was contended that the suit raised issues on what constitutes public land; whether the defunct local authorities had legal authority to allocate land; whether County Governments could lawfully allocate land; and what interests are recognized in unregistered land among other issues.

4. The 1st Respondent filed a replying affidavit sworn on 17th February, 2021 in opposition to the application. It was contended that the subject matter of the suit before the trial court was **Plot No LP. 441 Maralal (Lporos area)** measuring 0.57 ha which was allocated to him and not 88 acres as alleged by the Applicant.

5. The 1st Respondent disputed that the suit before the trial court raised any fundamental questions of law and asserted that the suit concerned a normal land dispute which could be competently handled by a Senior Principal Magistrate. It was contended that the application did not satisfy the threshold for transfer of suit since he bought the suit property for Kshs 700,000/= which value falls within the jurisdiction of the trial court.

6. The 3rd Respondent filed a replying affidavit sworn by its county secretary Bosco Ole Sambu, on 31st March, 2021 in opposition to the application. It was contended that under **Section 7 of the Magistrates' Courts Act, 2015** the pecuniary jurisdiction of a Senior Principal Magistrate is Kshs 15 million hence the value of the suit property falls within the jurisdiction of the trial court.

7. The 3rd Respondent reiterated that the suit property was **Plot No. LP 441 Maralal (Lporos area)** which measured 0.567 ha. It was contended that the pleadings of the parties before the trial court indicated that the 1st Respondent bought it for Kshs 700,000/= from one James Baranja Lenareu vide a sale agreement dated 7th March, 2012. It was contended that the instant application was meant to derail the proceedings before the trial court hence the court was urged to dismiss it with costs.

8. The Applicant filed a further affidavit sworn by James Mokua on 19th May, 2021 in support of the application. It was contended that although the 1st Respondent claimed only a portion of 0.576 ha the same was part and parcel of the 88 acres claimed by KWS as public land.

It was further contended that in order for the court to determine whether the 1st Respondent was entitled to the portion of 0.57 ha (1.41 acres) the court had first to establish whether the entire portion of 88 acres was public land in actual occupation of KWS. The court was consequently urged to allow the application on the basis that the value of the subject matter before the trial court was Kshs 380 million.

9. When the application was listed for *inter partes* hearing, it was directed that the same shall be canvassed through written submissions. The parties were consequently given timelines within which to file and exchange their respective submissions. The record shows that the Applicant filed its submissions on 20th May, 2021, whereas the 1st Respondent on 14th June, 2021. The 3rd Respondent did not file any submissions since its advocate indicated to court that it supported the application for transfer.

10. The court has considered the application for transfer of suit, the replying affidavits in opposition thereto as well as the further affidavit. The court is of the opinion that the main question for determination herein is whether or not the Applicant has made out a case for transfer of the suit pending before the trial court to this court.

11. The application for transfer is essentially based upon **Section 18 of the Civil Procedure Act** which stipulates as follows:

“(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage —

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn”.

12. On the other hand, **Section 12 of the Civil Procedure Act** stipulates as follows in relation to suits concerning immovable property:

“Subject to the pecuniary or other limitations prescribed by any law, suits —

(a) for the recovery of immovable property, with or without rent or profits;

(b) for the partition of immovable property;

(c) for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;

(d) for the determination of any other right to or interest in immovable property;

(e) for compensation for wrong to immovable property;

(f) for the recovery of movable property actually under distraint or attachment;

where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate.

13. The court has considered the material and submissions on record on the issue of transfer. The main ground advanced by the Applicant for seeking transfer is that the trial court lacks pecuniary jurisdiction to try the suit before it because the value of the subject matter is Kshs 380 million. The court has noted from copies of the pleadings before the trial court that the 1st Respondent is not claiming the 88 acres of land claimed by KWS. The 1st Respondent's claim is clearly described in the pleading as restricted to Plot No. LP 441 (*the Lporos area*) measuring 0.56 ha (*about 1.41 acres*).

14. The pleadings and material on record further reveal that the 1st Respondent acquired the said plot in 2012 for Kshs 700,000/=. There is no demonstration on record that the value has since risen beyond the pecuniary jurisdiction of the trial court. The valuation of Kshs 360 million which the Applicant exhibited was for the entire 88 acres said to be in possession of KWS. Going by that valuation, the average value of 1 acre would be in the region of Kshs 4.0 million. That would translate to a value of Kshs 5.64 million for the portion of 1.41 acres comprised in Plot 441. The court is thus far from satisfied that the value of Plot 441 is beyond the jurisdiction of the trial court as stipulated in Section 7 of the Magistrates' Courts Act, 2015.

15. The court is further not satisfied that a transfer of suit should be granted on the basis of the alleged weighty legal issues involved

in the suit. The court is unable to discern any novel or complex issues in the dispute amongst the parties. The issue of whether or not the defunct local authorities had legal authority to allocate public land or community land are issues which are routinely adjudicated before our courts. Any party dissatisfied with a decision rendered by the Magistrates' Court is always at liberty to move the court by way of appeal.

16. The upshot of the foregoing is that the court is not satisfied that the Applicant has made out a case for transfer of the suit pending before the trial court to this court. Consequently, the Applicant's notice of motion dated 27th January, 2021 is hereby dismissed with no order as to costs. It is so ordered.

Ruling Dated and Signed in Chambers at Nyahururu this 4th day of November, 2021 and delivered via Microsoft Teams platform.

In the presence of:

Ms. Kilimo holding brief for Mr. Mokuu for the Applicants

Mr. Mwangi holding brief for Mr. Abuya for the 1st Respondents

Mr. Kagicha for the 2nd Respondent

Mr. Macharia holding brief for Mr. Gathogo for the 3rd Respondent

CA - Carol

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Y. M. ANGIMA

JUDGE