

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

MISCELLANEOUS APPLICATION NO. 14 OF 2021

JABALI CHONDO KAVU.....APPLICANT

VERSUS

SULEIMAN OMAR MWAROGO

(AKA CHIBWANDA wrongly sued as MAPESA MEJA).....RESPONDENT

RULING

(Application to transfer a suit from the Magistrate's Court to the Environment and Land Court; application filed because the pecuniary value of the subject matter exceeded the jurisdiction of the Magistrate; Value being of Kshs. 44,000,000/= yet the pecuniary limit for the Magistrate's Court is Kshs 20,000,000/=; no reason given as to why the suit was filed in a court with no jurisdiction; in opinion of court transfer ought to be effected where the applicant demonstrates inadvertence or excusable mistake and that he filed suit in good faith in the wrong court; none demonstrated in this application; application dismissed)

1. The motion herein, dated 22 March 2021, seeks orders to transfer the suit *Mombasa CM ELC No. 116 of 2019, Jabali Chondo Kavu vs Suleiman Omar Mwarogo (Aka Chibwanda)*, filed in the Chief Magistrate's Court Mombasa, to this court for hearing and determination. The application is based on the grounds inter alia that the Chief Magistrate's Court does not have the requisite pecuniary jurisdiction to hear the matter as it exceeds the value of Kshs. 20,000,000/= which is the pecuniary limit for matters before the Magistrate's Court. There is an attached valuation report which shows that the value of the property is Kshs. 44,000,000/=.

2. The suit itself was commenced through a plaint filed on 16 August 2019 with the applicant as plaintiff. In the suit, he averred to be the owner of the Plot No. 356/II/MN having purchased it in the year 2014. In May 2019 he came to learn that the defendant has interfered with the land. In the suit he has sought orders to have the defendant permanently restrained from the suit land. A defence was filed on 28 October 2020. The defendant asserted that he has been in the property for over 13 years and has therefore acquired title to the land by way of adverse possession. He contested the jurisdiction of the Magistrate's Court and pleaded that the court does not have jurisdiction as the value of the subject matter is in excess of Kshs. 20,000,000/=. He subsequently filed a preliminary objection seeking the striking out of the suit on the basis of pecuniary jurisdiction. I am not sure if this objection was ever heard.

3. I have considered the application and I must reject it. The applicant filed suit in a court that had no jurisdiction at all in the first place. It in fact appears that he was aware that the land was valued at more than Kshs. 20,000,000/= when he filed suit. I have seen a supporting affidavit that he had sworn on 15 August 2019 (in support of an application for injunction that he filed in the suit) where he stated that he purchased the property in the year 2014 for over Kshs. 20 million. Within the application before me, the applicant has not explained why he proceeded to file suit in the Magistrate's Court while he was aware that the value of the land is more than Kshs. 20,000,000/=.

4. Although the court has wide discretion to transfer a suit filed in the wrong court, I think this can only be done upon very good explanation being provided as to why the matter was filed in the wrong court in the first place. The applicant must demonstrate that he filed suit in the wrong court in good faith, through inadvertence and/or excusable mistake, and therefore deserves to be pardoned and the discretion of the court extended in his favour. I do not think that the court ought to provide grace to a litigant who has deliberately, and for purposes only known to him, proceeded to file suit in a court without jurisdiction. The discretion to transfer in my view must be used sparingly and only in cases where it is clear that the applicant acted in utmost good faith and had reason to be mistaken on the choice of court. Bar this, the matter filed in the court without jurisdiction ought to be struck out.

5. I have already mentioned that no explanation whatsoever has been given by the applicant as to why he filed suit in a court without jurisdiction. I am thus not persuaded to exercise my discretion to allow this application. This application is hereby dismissed, but since it was not opposed, I make no orders as to costs.

6. Orders accordingly.

DATED AND DELIVERED THIS 9TH DAY OF NOVEMBER 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA