



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC MISC. CASE NO. 23 OF 2019

CHARLES LIYOKHOPLAINTIFF/APPLICANT

VERSUS

MARTINE NGAIRA LIYOKHO

DISTRICT LAND REGISTRAR DEFENDANTS/RESPONDENTS

RULING

The application is dated 12th April 2018 and is brought under order 18 of the Civil Procedure Rules and section 38 (1) of the Limitation of Actions Act and section 13 (7) of the Environment and Land Act seeking the following orders;

1. That this honourable court be pleased to order that suit No. ELC Case No. 21 of 2018 filed at the Principal Magistrate's Court Vihiga be transferred to the High Court Environment and Land Court, Kakamega for hearing and final determination.
2. That costs of this application be provided for.

It is supported by the supporting affidavit of the applicant and on the following grounds that the claim in Principal Magistrates Vihiga ELC No. 21 of 2018 is a claim based on Trust land. That the provisions of the law dictate that High Court has jurisdiction to hear matters regarding trust in land. That the land in question falls within the jurisdiction of this honourable court. That it is in the interest of justice that the orders sought herein be granted.

The respondent submitted that the applicant (his father) is the registered proprietor of land parcel known as East Bunyore/Ebusamia/60. The said land was inherited from his great grandfather and in terms of the customary law, the Land Act and the Community Land Act such land is held in trust for the family especially the sons and cannot be given out without their consent. That the suit parcel is ancestral land held in trust by the applicant for his family pursuant to Luhya Customary Law thus the Magistrate's Court Vihiga has jurisdiction to hear and determine this suit. That the value of the subject matter is below twenty million shillings thus the Magistrates Court has pecuniary jurisdiction to handle the matter. That his father who holds the suit parcel which is ancestral land in trust for his children and that all he is claiming is beneficial and occupational rights over the suit parcel. That the applicant voluntarily allocated him a portion of the suit parcel as per Luhya Customary Law to establish his home but is now threatening to demolish the same. That he is seeking to enforce his beneficial customary and occupational rights over the suit parcel having lived on the same for a long time and thus it is an issue that can be handled by the Magistrate's Court. That it is fair and just that the application herein be dismissed with costs for not disclosing a reasonable cause of action and for being frivolous, vexatious and an abuse of the court process.

The court has carefully considered the submissions herein. In the case of Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others (2017) eKLR the court held that;

“By parity of reasoning, although under Article 162 (2) of the Constitution Parliament is mandated to establish courts with the status of the High Court to hear and determine disputes relating to employment and labour relations and environment and the use and occupation of, and title, to land, that in itself does not confer an exclusive jurisdiction to those specialized courts to hear and determine the specified types of cases. However, as already stated, Article 165 (5) is clear that the High Court has no jurisdiction in respect of matters falling within the jurisdiction of the specialized courts. Whereas Parliament is empowered to enact legislation to confer jurisdiction to the Magistrates courts to hear and determine disputes stipulated under Article 162 (2) of the Constitution, it cannot establish a Superior Court or confer upon a Superior Court jurisdiction to hear employment and labour relations cases and environment and land cases”.

After the enactment by Parliament, The Statute Law (Miscellaneous Amendments) Act, 2015, Act No. 25 of 2015 received Presidential

assent on 15th December 2015. Under Section 2 thereof, several laws were amended as indicated in the schedule thereto. Of relevance to this judgment were amendments made to The Environment and Land Court Act, Act No. 19 of 2011 (the ELC Act) with a view to conferring on the Chief Justice the mandate to transfer Judges from the specialized courts to the High Court and vice versa, and clothing Magistrates courts with authority to hear and determine disputes relating to employment and labour relations and the environment and the use and occupation of, and title to, land. The relevant sections are as follows;

“26. Sitting of the Court

- (1) The Court shall ensure reasonable and equitable access to its services in all Counties.
- (2) A sitting of the Court may be held at such places and at such times, as the Court may deem necessary for the expedient and proper discharge of its functions under this Act.
- (3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.
- (4) Subject to Article 169(2) of the Constitution, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle —
 - (a) disputes relating to offences defined in any Act of Parliament dealing with environment and land; and
 - (b) matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates' Courts Act.
- (5) Appeals on matters from the designated magistrate's courts shall lie with the Environment and Land Court.”

Amendments were made to Section 101 of the Land Registration Act which was amended by inserting the words “*and subordinate courts*” immediately after the expression “2011” and Section 150 of the Land Act that was amended by deleting the words “*is vested with exclusive jurisdiction*” and substituting therefore the words “*and the subordinate courts as empowered by any written law shall have jurisdiction.*” The Magistrates Courts Act, Act No. 26 of 2015, an Act of Parliament to give effect to Articles 23(2) and 169(1)(a) and (2) of the Constitution was enacted to confer jurisdiction, functions and powers on the magistrates' courts; to provide for the procedure of the magistrates' courts, and for connected purposes. It received Presidential assent on 15th December 2015. It was to commence on 2nd January 2016. Section 9 of that Act deals with claims in employment, labour relations claims; land and environment cases and provides that:

“A magistrate's court shall —

- (a) in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act (Cap. 12A) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to —
 - (i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (ii) compulsory acquisition of land;
 - (iii) land administration and management;
 - (iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (v) environment and land generally.
- (b) in the exercise of the jurisdiction conferred upon it under section 29 of the Industrial Court Act, 2011 (No. 20 of 2011) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to employment and labour relations.”

I find that the magistrate's court has jurisdiction to entertain this matter subject to pecuniary jurisdiction. It is not disputed that the suit land is valued below twenty million Kenya shillings. I find that the magistrate court has jurisdiction in proceedings of a civil nature concerning matters under African Customary Law involving land held under customary tenure as provided under the Magistrate's Act. The applicant has not demonstrated grounds warranting the transfer of this matter to this court. This application is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 3RD JULY 2019.

N.A. MATHEKA

JUDGE