



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 298 OF 2017

KNIGHT MORAA OMWOYO.....PLAINTIFF/APPLICANT

VERSUS

WILLIS ABWAO ADERO.....DEFENDANT/RESPONDENT

RULING

1. In the Notice of Motion dated 23rd September, 2020, the Plaintiff has sought for the following orders:

a. That this Honourable Court be pleased to order a transfer of this suit filed in this Court to the Lower Courts of Kangundo since the subject matter is within the jurisdiction of Kangundo Law Courts.

b. That the cost of this Application be in the cause.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that this court has the jurisdiction to transfer this matter to the Kangundo Law Courts; that the Kangundo Law Courts can hear and determine land matters and that the value of the suit property falls within the pecuniary jurisdiction of the lower court.

3. In response, the Defendant submitted that the Plaintiff should not be allowed to shop for a court; that the Application does not satisfy the threshold of transferring a case to another court as envisaged under Section 18 of the Civil Procedure Act and that the transfer of the suit shall be prejudicial to him because he resides and works for gain in Nairobi. The Plaintiff filed submissions which I have considered.

4. This suit was commenced by way of a Plaint dated 11th July, 2017. In the Plaint, the Plaintiff has alleged that she entered into an Agreement dated 15th June, 2015 with the Defendant in respect of plot number 0.49 of Komarock B 1/462 KBC area (*the suit property*).

5. It is the Plaintiff's case that they agreed that the suit property will be held in trust for their son Dylan Ochieng and other siblings; that they hold ½ share each of the suit property and that an order of specific performance should issue.

6. The Plaintiff is seeking to have this suit to be transferred to Kangundo Law Courts. Section 18 of the Civil Procedure Act provides 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.”

7. It is not in dispute that the suit property is situate within the jurisdiction of Kangundo Law Courts. Section 12 of the Civil Procedure Act provides that subject to the pecuniary jurisdiction or other limitations prescribed by law, suits for recovery of immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate.

8. Considering that the Defendant has not placed any evidence before me to show that the value of the suit property exceeds the pecuniary jurisdiction of the Kangundo Law Courts, and in view of the provisions of Sections 12 and 18 of the Civil Procedure Act, I shall allow the Plaintiff's Application.

9. For those reasons, the Application dated 23rd September, 2020 is allowed as follows:

a. This suit is transferred to Kangundo Lower Courts for hearing and determination.

b. Each party to bear his/her own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 21ST DAY OF MAY, 2021.

O. A. ANGOTE

JUDGE