



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**MISC. CIVIL APPLICATION NO. 41 OF 2014**

**MARTIN KINOTI MBAE.....APPLICANT**

**VERSUS**

**IRERI M'RARIA.....RESPONDENT**

**RULING**

**BACKGROUND**

1. The appellant has moved this Honourable court for the following orders:

**i. The honourable court be pleased to order withdrawal of SRM CC No. 23 of 2004 from the SRM Chuka court to another court within Meru of competent jurisdiction to hear and determine the same.**

**ii. That the honourable court to order stay or set aside the court's orders dated 5<sup>th</sup> August 2014 the same being illegal and an abuse of court's process and powers.**

2. That application is premised under section 18 (1) (b) II and Article 165 6 & 7 and order 22 rule 18, 25,31 and 32 CPA, the constitution of Kenya 2010 and the CPR respectively. The applicant deponed that his father one Fredrick Mbae Jeremiah is the registered owner of a plot no. 19 situated at Kabeche Market which has a shop and rooms used for business. The applicant also deposed that all the rooms are occupied by the respondent who is also the plaintiff in PMCC no. 23 of 2004 (Chuka) where three Magistrates have mishandled namely G.M Njuguna, A.N Kimani and C.K Obara. The applicant further stated that false consents have been filed and admitted by the court and also false affidavits have been signed and admitted by the court without any evidence of identity of the person who is making the same. The applicant deponed that forged signatures have also been admitted. For those reasons, the applicant believes that this case has been mishandled and wants this court to order for the transfer of the case to another station with competent jurisdiction for hearing and determination.

3. On his part, the learned counsel Mr. Kioga on the other hand deponed to this application stating that the applicant has informed him that his father is a person of unsound mind and cannot protect his interest in a court of law. The learned counsel also stated that the applicant's father has never engaged an advocate and has never appeared before any advocates office yet it is alleged that he filed a consent admitting the entire case. Mr. Kioga further stated that the applicant instructed him that the consent was false and a forgery and that the magistrate at Chuka who recorded the consent did not direct his mind to that obvious allegation. The learned counsel also averred that despite material evidence to prove those allegations, the magistrate rejected the same as not proven.

4. When the application which was filed under certificate of urgency was placed before the duty court, the same was certified urgent to be heard during the vacation. The court also issued a stay of the warrant of arrest issued on 5/8/2014 pending hearing and determination of this application, interparties. The court further directed the application to be served for interparties hearing on 13/10/2014 (now past). When the matter came up for interparties hearing, on 24/11/2014, the parties agreed to dispose of the same by written submissions.

**APPLICANT'S SUBMISSIONS**

5. In a brief submissions dated 8<sup>th</sup> December, 2014 and filed on 9<sup>th</sup> December 2014, the applicant through the firm of M.M Kioga & co. advocates stated that they will rely on the affidavit by Martin Kinoti Mbae sworn on 20/08/2014 and particularly paragraph 5 and 6 thereof. On matters of law ad facts the learned counsel stated that the applicant will rely on the proceedings of the court in case no CMCC 23 of 2004 (Chuka) and the records of the court dated 30/7/2014 and 5<sup>th</sup> August 2014.

6. The learned counsel also urged the court to consider the statement of facts by Mr. Mburugu Kioga advocate filed in court on 21/8/2014 and sworn on 20/8/2014 respectively. On matters of law the learned counsel cited the following:

- i. Civil procedure Act cap 21 Laws of Kenya and the rules made thereunder.
- ii. The constitution of Kenya
- iii. Legal authorities

### **RESPONDENT'S SUBMISSIONS**

7. The respondent through the firm of Mbaabu M'Inoti & co. advocates submitted that the application dated 20<sup>th</sup> August 2014 is frivolous vexatious and an abuse of the court process. Counsel submitted that in PMCC no. 23 of 2004 (Chuka) the respondent is the plaintiff who is also father to the applicant. In that case which is sought to be transferred, the applicant is not a party. He had sought to be enjoined to represent his father but the court declined and gave reasons for the decision.

8. The applicant was aggrieved by that decision and filed appeal being civil appeal no. 36 of 2014. That appeal is still pending hearing and determination. Before prosecuting that appeal the applicant has moved to this court seeking the orders to withdraw case no. 24/2004 before Chuka law courts and transferring it to another court in Meru of competent jurisdictions. The applicant also sought to stay and/or set aside the court's order dated 15<sup>th</sup> August 2014 on grounds that the same are illegal and an abuse of court process and power. The learned counsel further submitted that the applicant who is not a party to the SRMCC no. 23/2014 (Chuka) has no locus to bring the application and direct the court where matters are to be heard and determined. Counsel also urged that the applicant does not own an iota of the plot in question being the subject of SRMCC no. 23/2014 (Chuka) nor does he occupy any portion thereof.

### **DECISION**

9. I have considered the materials placed before me and the written submissions by counsels appearing for the parties herein. The applicant Martin Kinoti Mbae has moved this honourable court to stay proceedings in SRMCC no. 23 of 2004 (Chuka) and subsequently transfer the suit to another court with competent jurisdiction. The applicant is not a party in that suit though he had made an application to be enjoined which application was dismissed. Being dissatisfied with that order of dismissal, he exercised his right and appealed to the superior court in civil appeal no. 36 of 2014. Before that appeal is heard and determined, the applicant will remain a stranger in that suit unless and until he is enjoined as a party. As such, he does not have the *locus standi* to transfer that suit or stay proceedings unless an order has been made which directly affects him. I have noted from the proceedings attached to this application from Chuka Law courts in SRMCC no. 23 of 2004. In particular, the applicant has referred this court to proceedings where he alleged has been mishandled by three Judicial officers based in Chuka.

10. In particular he referred this court to proceedings of 5<sup>th</sup> July 2006. Upon perusal of those proceedings the record shows that the court was presided over by Hon. G.M Njuguna – PM where Mr. Inoti advocate for the plaintiff referred to a consent in the court file signed by the defendant and the plaintiff's advocate.

11. Counsel sought to have the same adopted as an order of the court. The defendant who was acting in person had no objection and the court allowed the same. The applicant is alleging that the said consent is false and should not have been admitted by the court. If a party is dissatisfied with a decision by a court of competent jurisdiction either on points of fact or law then that should be addressed in a structured legal manner. If any party feels that there was impropriety committed in the proceedings there are administrative mechanisms to address such issues. A suit cannot simply be transferred from one court of competent jurisdiction to another for apprehension by a person that justice may not be done to one of the parties. In my view, the applicant is a stranger to these proceedings as his application to be enjoined as a party was declined and his appeal on the issue is pending.

12. Unless and until that appeal is heard and determined which is now over four (4) years since it was lodged, the applicant shall remain a busy body with no *locus standi* to move this court for any orders in law. Suffice to say that by mentioning the three Judicial officers having mishandled the Chuka case no. 23 of 2004, without stating what particular acts of commission or omission, the applicant is blackmailing and intimidating the officers with a view to making orders favourable to him. The applicant being a stranger in the suit he is seeking to be transferred being SRMCC no. 23/2004 has no *locus standi* to have this suit transferred to another station. There are also no justifiable reasons to have the suit transferred to another station. There are no acts of commission or omission allegedly committed by the named Judicial Officers based in Chuka law courts to warrant the case being transferred to another station.

13. In any event where a party feels aggrieved by a decision of a court or any other omission or commission in the course of a hearing before a competent body/tribunal, a party has to address the issue through the laid down procedural mechanism as by law established/provided. If the applicant has a problem with proceedings of a court, he has to address in appeal and if it has to do with impropriety then the parties have to address to the same administratively. In my respective view, a blanket complaint against three judicial officers who may have handled the case at one point or the other should not be accused generally without specifying particular acts of omission or commission. In the upshot I find that the applicant's application dated 20<sup>th</sup> August 2014 is incompetent, frivolous vexatious and an abuse of the court process. The same is hereby dismissed with no orders as to costs.

**Read, delivered and signed in the open court this 4<sup>th</sup> day of July 2018**

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**MR. E. CHERONO**

**ELC JUDGE**

**In the presence of:**

CC: Janet/Galgalo

Mr. Mutegi holding brief for Ms. Mamo for respondent

Applicant/advocate – absent