



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT BUSIA**

**ELC MISC CASE NO. E002 OF 2020**

**ALBERT WANDERA EMOJON.....APPLICANT**

**= VERSUS =**

**GEORGE ONYANGO OMACH.....RESPONDENT**

**RULING**

1. The Applicant moved this court under certificate with an application filed on the 30<sup>th</sup> of September, 2020 seeking for orders THAT:
  - a. Spent
  - b. Spent;
  - c. That an order do issue transferring into this court for hearing and disposal of BUSIA CMC CC NO. 204 OF 2012 – between George Onyango Omachi vs. Albert Wandera Emojong; and**
  - d. The costs of the application be provided for.**
2. The Application was supported by the affidavit of ALBERT WANDERA EMOJONG dated 30<sup>th</sup> September, 2020 and on the ground that the Applicant's defence raises a counterclaim that ousts the jurisdiction of the subordinate court.
3. The Respondent filed a replying affidavit to the application on the 26<sup>th</sup> of November, 2020 denying the allegations in the supporting affidavit and stating that:
  - a. The application is an abuse of the Court filed solely to delay BUSIA CMCC No. 204 of 2012 and circumvent the orders issued by the lower court among them a last adjournment;
  - b. The application is bare and the only allegation ousting the lower court jurisdiction is a non-existent counter claim called annexure *AWE1* which is neither annexed or filed in the lower court at the time of filing the application;
  - c. The lower court has full jurisdiction to hear and determine BUSIA CMCC No. 204 of 2012 as the Respondent is only seeking for eviction and injunction of the applicant from his parcels of land;
  - d. The Applicant has employed all tactics to delay this matter because he is benefitting from the illegal occupation of the land;
  - e. That the counterclaim is improper and aimed at delaying the matter;
4. The Applicant filed a supplementary affidavit on the 18<sup>th</sup> February, 2021 reiterating the contents of his supporting affidavit and annexing his Defence and Counterclaim.
5. Parties agreed to canvass the application by way of submissions. It is only the Respondent, who filed his submissions on the 11<sup>th</sup> of December, 2020. The Respondent submitted that the Defence and Counterclaim was filed after the pleadings were closed in BUSIA CMCC No. 204 of 2012 and the Respondent already testified and closed his case and was pending defence hearing. He urged the Court to dismiss the application with costs as it was only a delaying tactic by the Applicant not to conclude the lower court matter.

6. Section 9 of the Magistrates' Court Act, 2015 donates jurisdiction to the Magistrate's Court in handling environment and land matters. It 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 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;***

7. The Magistrates' Act derives its powers from Section 26 of the Environment and Land Court Act. **Section 26 of the Environment and Land Court Act provides for the Sitting of the Court thus; -**

(1) ...

(2) ...

**(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. (underline mine for emphasis).**

8. The Defence and Counterclaim is dated 30<sup>th</sup> October, 2020 and filed on the same day at the Lower Court shows it was filed one month after this present application. The counterclaim seeks for an order of de-registration of the Plaintiff as the proprietor of the suit lands and the same be registered in the names of the Defendant's father ANTHONY EMOJONG OGOLA. The defendant/applicant has not highlighted why he thinks the subject matter in the counter-claim is not within the jurisdiction of the Magistrate's Court in light of the provisions of section 9 of Magistrate's Court Act & sec 26 of ELC Act. In **Amos Tirop Matui & another vs. Festus Kiprono & 2 others (2018) eKLR**, the Court held that,

**“...Section 2 of the Act defines court to mean the Environment and Land Court established by the Environment and Land Court Act, 2011 and other courts having jurisdiction on matters relating to land and therefore the argument by counsel that the law is silent on the powers of the magistrate's court in rectification of the register are without basis as the law is very clear in sections 2 and 80 of the Land Registration Act Cap 12A laws of Kenya that the courts referred to include the other courts with jurisdiction to hear environment and land matters which are the magistrates courts.**

**In conclusion, I do find that the powers of the magistrate's court in respect of disputes relating to title to land are very wide and extensive. The Magistrates court have jurisdiction to cancel title and rectify a register in compliance with section 80 of the Land Registration Act so long as the value of the subject matter falls within the pecuniary jurisdiction of the court.”**

9. In light of the foregoing analysis, I come to the conclusion that the present application is without merit and proceed to dismiss it with costs to the Respondent.

**DATED, SIGNED & DELIVERED AT BUSIA THIS 9TH DAY OF JUNE, 2021.**

**A. OMOLLO**

**JUDGE**