



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. MISC. APPLN. NO. E001 OF 2020

RONALD MUSYOKI MATHOOKO.....1ST APPLICANT

JOSEPH KIOKO MATHOOKO.....2ND APPLICANT

PAUL MAKAU MATHOOKO.....3RD APPLICANT

VERSUS

ELIUD CHEGE.....1ST RESPONDENT

WILLIS OKOTH.....2ND RESPONDENT

BERNARD ATONI.....3RD RESPONDENT

MBUKONI HOLDINGS LIMITED

CHARLES NJOROGE & 42 OTHERS.....4TH RESPONDENT

RULING

1. In the Notice of Motion dated 12th August, 2020, the Applicants have sought for the following order:

a. That this Honourable Court be pleased to transfer CMCC ELC No. 49 of 2018, Ronald Musyoki Mathooko & 2 Others versus Eliud Chege & Others from the Chief Magistrate's Court at Machakos to Environment and Land Court, Machakos.

2. The Application is premised on the grounds that the Applicants filed CMCC ELC. Case No. 49 of 2018; that the value of the said property is more than Kshs. 20,000,000 and that this court should transfer the suit in the lower court to this court.

3. In reply, the 3rd Respondent deponed that this suit should not be transferred to the Environment and Land Court because it is properly instituted in the Subordinate Court; that the best evidence to prove the value of any property including land, is by production of a Valuation Report and that such a Valuation Report should be produced first.

4. The 3rd Respondent further deponed that if any award is made by the lower court, it will be against individuals and not cumulative and that the lower court has the pecuniary jurisdiction to hear and determine the suit.

5. In his submissions, the Applicants' advocate submitted that under Section 18 of the Civil Procedure Act, this court is empowered to withdraw and transfer any suit instituted before a lower court to itself or to another Subordinate Court and that the lower court does not have the requisite jurisdiction to entertain CMCC ELC No. 49 of 2018 because the value of the land in dispute is Kshs. 112,000,000.

6. The 1st and 3rd Respondent's advocate submitted that under Section 26(3) and (4) of the Environment and Land Court Act, the Magistrates who have been duly gazetted and have the requisite pecuniary jurisdiction can hear land disputes and that the suit that was filed in the Subordinate Court by the Applicants herein is premised on trespass by the Respondents.

7. In the Notice of Motion dated 12th August, 2020, the Applicants have sought for an order to transfer CMCC ELC No. 49 of 2018 from the Chief Magistrate's Court at Machakos to the Environment and Land Court, Machakos.

8. Section 18(1) 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.”

9. The Applicants have deponed in their Supplementary Affidavit that the value of the parcel of land known as Mavoko Town Block 3/2209 which is the subject matter is Kshs. 112,000,000 and that this value exceeds the Chief Magistrate’s pecuniary jurisdiction of Kshs. 20,000,000.

10. I have perused the Valuation Report annexed on the Supplementary Affidavit dated 6th March, 2021. The Valuation Report shows that land known as Mavoko Town Block 3/2209, Joska Area, Machakos County measuring 16.15 Ha has a current market value of Kshs. 112,000,000.

11. Considering that the Applicants have annexed on their Supplementary Affidavit the Report showing the value of the suit property as at 6th March, 2021, and in view of the fact that the Chief Magistrate sitting in Machakos has the pecuniary jurisdiction of Kshs. 20,000,000, it is my finding that the suit filed in the lower court as CMCC ELC. No. 49 of 2018 can only be heard and determined by this court.

12. For those reasons, I allow the Applicants’ Application dated 12th August, 2020 as follows:

a. This court hereby withdraws and transfers Machakos CMCC ELC. No. 49 of 2018 from the Chief Magistrate’s Court to this court.

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

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 16TH DAY OF JULY, 2021.

O. A. ANGOTE

JUDGE