



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC MISC NO. 17 OF 2020

SAID ABDIKAARIM ABDIAPPLICANT

VERSUS

1. SHUKRI JATTANI SOKORE....1ST RESPONDENT

2. DAUDI SORAN SORA.....2ND RESPONDENT

RULING

1. Before me is a notice of motion dated 9.3.2020 brought pursuant to Section 1A, 1B, 3A, 13 and 18 of the Civil Procedure Act, Order 51 rule 1 of the Civil Procedure Rules and Article 162 (2) (b) of the Constitution of Kenya. The applicant is seeking an order for the re-transfer of Isiolo case CM-ELC NO. 22 of 2018 to the Environment and Land Court at Meru for hearing and determination. The application is based on the grounds on the face of it and on the supporting affidavit and further affidavit of **Said Abdikarim Abdi**, the applicant. He contends that the suit land measures about 0.8200 hectares (2 acres) and the market value is Kshs. 16,000 per acre. He believes that the subject matter falls within the jurisdiction of this court.

2. The applicant has tendered a valuation report by Ni-light Consultants Limited dated 9th July 2020 indicating the value of the suit land as Kshs. 30,000,000. In that regard, the applicant contends that the Chief Magistrates Court has no jurisdiction to hear the suit.

3. The application is opposed by the 1st respondent vide a replying affidavit dated 26th November 2020, who avers that there exists no parcel known as ISL/97/159 as the dispute is in regard to residential plot NO. 916 CHECHELEZI Isiolo, which belongs to the 1st respondent. That the said plot measures 0.084 hectares (0.21 acres) situated in Isiolo and its value is within the pecuniary jurisdiction of the magistrate's court. He avers that the applicant had originally instituted the suit in the High Court and the parties consented to have it transferred to Isiolo Magistrate's court for determination and it is now at the hearing stage. Thus the application is made in bad faith and is a further attempt by the applicant to delay the matter.

4. The 1st respondent further states that the valuation report attached is an afterthought intended to hoodwink this court, the valuers were also engaged by a person not a party to this proceedings thus a stranger and the said valuation report valued the property at Kshs. 21, 000,000 and not Kshs. 30,000,00 as alleged by the applicant.

5. The 1st respondent has attached his own valuation report done by Prudential Valuers Limited who valued the property at Kshs. 7,000,000. The 1st respondent therefore contends that the application is frivolous, vexatious and an abuse of the court process and it ought to be dismissed with costs.

6. The applicant filed a further affidavit in response to the 1st respondents replying affidavit dated 18/01/2021 averring that the valuation report tendered by the 1st respondent is for plot No. 916 Chelelesi measuring 0.084 hectares or 0.21 acres which is different parcel from the suit property which is plot No. 151/97/159 measuring 0.81 hectares or 2 acres. Further the 1st respondent did not file any counter-claim in respect to plot 916 Chelelesi and as such there is no cause of action within which this court can determine the issue of jurisdiction based on the valuation report of the 1st respondent.

7. The 2nd respondent has not filed any response to the application.

8. I have considered all the arguments raised herein, the submissions of the parties as well as the case law advanced by the 1st respondent (**Matthias Mutisya Mwinzi & Another V Bash Hauliers & Another [2020]eKLR, Sustainable Management Services V New Mitaboni F.C.S [2017]eKLR**).

9. The Magistrates' Court Act confers jurisdiction on the Magistrates' court at section 9. Section 9(a) thereof 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 -

.....

(v) environment and land generally.

10. Section 26 of the Environment & Land Act provides that;

“(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.

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.

11. It is evident that **Section 26 of the Environment and Land Act** gives Magistrates court jurisdiction to handle suits relating to land disputes. In the case of **Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 others [2013] eKLR**, the court had this to say on matters jurisdiction;

“The proper place of jurisdiction and the necessity to deal with it as the first order of business before an enquiry into merits of a cause was best captured in the timeless words of Nyarangi J.A in The OWNERS OF THE MOTOR VESSEL LILLIAN 'S' Vs. CALTEX KENYA LTD [1989] KLR 1;

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it, (emphasize added). Jurisdiction is everything, without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction (emphasize added)”.

12. The question is, which court is seized of the matter, which court has to down its tools once it determines that it has no jurisdiction? The magistrate's court is certainly the one currently seized of the matter. That court is the one which should have an opportunity of considering the question of jurisdiction in the first instance.

13. I note that in paragraph 7 of the replying affidavit of the 1st respondent, he has stated that this matter was initially filed before this court. However, the parties consented to have the same transferred to Isiolo Magistrates court and an order to that effect was made on 6.2.2018. The said replying affidavit was filed way back on 30.11.2020. The applicant did not seek leave to file any further affidavit to refute the averments made by the 1st respondent. I pose the question; at what point since 6.2.2018 did it dawn upon the applicant that the value of the suit land had changed?

14. In the case of **Rapid Kate Services Limited vs. Freight Forwarders Kenya Limited & 2 Others [2005] 1 KLR 292**, the court expressed itself as follows:

“The Court's power to transfer proceedings from one Court to another is a useful corrective measure to ensure that proceedings wherever began or whatever forum the plaintiff has initially chosen should be dealt with or heard or determined by the Court most appropriate or suitable for those proceedings. When making or refusing an order for transfer the Court will have regard to the nature and character of the proceedings the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice. It is a discretionary power of the Court under section 3A of the Civil Procedure Act...”

15. The nature and character of the proceedings herein do not warrant the issuance of the orders sought. In the circumstances, this miscellaneous suit is hereby dismissed with costs to the 1st respondent.

DATED, SIGNED AND DELIVERED AT MERU THIS 7TH DAY OF JULY, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 10.3.2021. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE