



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT CHUKA
CHUKA ELC CASE NO. 18 OF 2019
FORMERLY MARIMANTI ELC 48 OF 2017
FORMERLY CHUKA ELC 191 OF 2017

DALCO TRADING CENTRE.....**PLAINTIFF**

VERSUS

KAMAITA IMATHIU.....**DEFENDANT**

LAWRENCE N. MUGAMBI.....**DEFENDANT**

MOHAMED HASHIN JAMAH.....**DEFENDANT**

LAND REGISTRAR, THARAKA NITHI COUNTY.....**DEFENDANT**

RULING

1. This matter had proceeded for hearing and was part-heard by the Hon. P. M. Njoroge, J. The Plaintiff's had testified and the plaintiff's seven witnesses had testified and the plaintiff had closed his case. The 1st and 2nd defendants had also testified and one witness on their behalf had also testified. The 1st and 2nd defendants had also closed their cases. What was remaining was the 3rd and 4th defendants' cases. It was at this juncture that the Honourable Judge who was seized of this matter was transferred to ELC Isiolo.
2. When this matter came up before me on **20th September, 2021**, Mr. Siagi advocate for the Plaintiff made an application to have this matter transferred to ELC Isiolo to enable Hon. P. M. Njoroge, J, conclude the matter. Mr. Siagi's contention is that it is in the best interest of justice to have the matter transferred to enable the Judge who was seized of the matter and who took the evidence of several witnesses hear the remaining witnesses and conclude the matter. Counsel also contended that the 4th defendant and his advocate, Mr. Kiongo are based in Meru which is about 40 Kilometres from Isiolo.
3. Mr. Mwenda advocate for the 1st and 2nd defendants, and Mr. Wanyanga, advocate for the 3rd defendant opposed the application. It was their submission that this is a court of record, and that this court should proceed and hear the matter from where the same had reached.
4. On his part, Mr. Kiongo, learned counsel for the 4th defendant urged the court to exercise its discretion and decide on whether to transfer the matter or hear the matter from where it had reached after the proceedings have been typed.
5. This court has considered the submissions made by the advocates for the parties, and finds the issue for determination to be whether to transfer this matter to ELC Isiolo as submitted by the plaintiff's counsel or proceed with the matter from the stage it had reached upon the typing of the proceedings.
6. Order 18 Rule 8(1) of the Civil Procedure Rules provides as follows:

“Where a Judge is prevented by death, transfer, or other cause from concluding the trial of a suit or the hearing of an application, his successor may deal with any evidence taken down under the foregoing rules as if such evidence had been taken down by him or under his direction under the said rules, and may proceed with the suit or application from the stage at which his predecessor left it.”

7. In this instance, the trial Judge has been transferred to ELC Isiolo and is therefore prevented from concluding the trial of this suit. This court notes from the record that the evidence of the witnesses who have already testified were recorded under oath and nothing has been placed before this court by the plaintiff's counsel to show that the trial Judge left out or failed to consider important issues or to show any unsatisfactory recording of evidence by the said Judge that is only known to his personal knowledge. Order 18 rule 8(1) of the Civil Procedure Rules gives this court as the new trial Judge the discretion to decide whether or not to proceed with the suit from the stage at which my predecessor left it. It is trite law that this discretion ought to be exercised judicially to avoid injustice or hardship and not to obstruct or delay the course of justice. The court notes that at the conclusion of the trial, parties will be at liberty to put in written submissions which can also be highlighted to clarify any issues that they require the court to appraise itself of. Further, the plaintiff and indeed all other parties still have other avenues to remedy their cases, either through recalling of witnesses, through written submissions and highlighting as already stated, and lastly through the appellate process and therefore transferring the matter to ELC Isiolo does not wholly obtain.

8. This court therefore finds that this is not a suitable case for it to exercise its discretion in ordering for the transfer of this matter to ELC Isiolo. The application to transfer this suit to Isiolo is found to be lacking in merit and is hereby dismissed. The proceedings shall be typed and the matter proceed from where it had reached. A suitable hearing date shall be given. It is so ordered.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 18TH DAY OF OCTOBER, 2021 IN THE PRESENCE OF:

C/A: Ann

SIAGI FOR PLAINTIFF.

MURANGO FOR 1ST AND 2ND DEFENDANT.

N/A FOR WANYANGA FOR 3RD DEFENDANT

N/A FOR KIONGO FOR 4TH DEFENDANT.

C. K. YANO,

JUDGE.