



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC [OS] CASE NO. E008 OF 2021**

**VICTOR MATI NJERU.....PLAINTIFF**

**VERSUS**

**VICTOR MIRITI MUGUONGO..... DEFENDANT**

**RULING**

1. This matter was scheduled for hearing. However, Mr. Muthomi, the advocate for the defendant pointed out that the suit land is situate in Meru County and that all the parties reside in Meru County. Further, that the witnesses, including the Land Registrar are from Meru County. He therefore applied to have the matter transferred to ELC Meru for hearing and determination. Counsel for the defendant also stated that even then, he was not ready to proceed since the plaintiff's advocate informed him that he had not received the defendant's compliance documents, though the same had been sent. He stated that he needs time to find out from the courier as to why the documents were not delivered.

2. In response, Mr. Mwangi Maina, the advocate for the Plaintiff confirmed that it is true that the suit land is situate in Meru County and that the parties and their witnesses reside in Meru County. Counsel however, pointed out that the issue of the geographical jurisdiction was not raised in good time, adding that he was ready to proceed with the hearing since the court has unlimited jurisdiction.

3. I have considered the application and the submissions made by the advocates for the parties herein. The issue to determine is whether the suit should be transferred from this court to ELC Meru for trial and final determination. In so doing, I have to consider the principles of law in an application of this nature.

4. In the Bench Book on Environment and Land matters, the issue of transfer of cases has been addressed thus:

***“Where a matter is wrongly filed at the ELC Registry the matter shall be directed to be filed or transferred to the appropriate court registry in accordance to the Practice Directions Relating to the filing of suits, Applications and References in proper court (Paragraph 2 Practice Directions on Proceedings in the Environment and Land Courts, and on proceedings relating to the Environment and the use and occupation of, and title to Land and proceedings in other courts.)”***

5. In exercise of the powers conferred by the sixth schedule Part 5 section 22 and Article 161 (2) (a) of the constitution of Kenya and in pursuance of section 24, section 30(1) and (2) of the ELC Act among others, the Chief Justice vide Gazette Notice No. 5178 dated **25<sup>th</sup> July, 2014** made Practice Directions following the establishment of the Environment and Land Court. Note 1 of those practice directions provides that in the exercise of its authority and jurisdiction, the court shall at all stages of any trial be guided by Article 159 of the Constitution, section 1A and 1B of the Civil Procedure Act and section 3 of the ELC Act ***“so as to facilitate a) just, b) expeditious, c) proportionate and d) accessible resolution of disputes.”***

6. Note 14 of those directions provides as follows:

***“All new cases relating to the environment and the use and occupation of, and title to land not falling under paragraph 8 above, shall be filed in the nearest Environment and Land Court for hearing and determination by the said court and must be within the purview of the jurisdiction conferred upon the Environment and Land Court with particular regard to the jurisdictional limitation set under Article 162(2)(b) of the Constitution and section 13 of the Environment and Land Court Act No. 19 of 2011.”***

7. Whereas there is only one ELC in Kenya which sits in different stations as directed by the Chief Justice, it is not forbidden for a Judge of ELC sitting in one location to order a transmission or allocation of a case filed before him or her to another Judge sitting in another station.

8. Order 47 Rule 6(2) of the Civil Procedure Rules provides that ***“the court may of its own motion or on an application of any party to a***

*suit and for cause shown order that a case be tried in a particular place to be appointed by the court: provided always that in appointing such particular place for trial the court shall have regard to the convenience of the parties and of their witnesses and to the date on which such trial is to take place, and all other circumstances of the case.”*

9. The overriding objective provided for under section 1A and 1B of the Civil Procedure Act and the inherent power of the court under Section 3A are meant for the attainment of justice to parties who come to court. The court is therefore under statutory obligation while interpreting the provisions of the Act or exercising the powers conferred upon it thereunder to give effect to the overriding objective and in order to attain this objective, the court must strive towards ensuring the efficient disposal of the business of the court, the efficient use of the available judicial and administrative resources and the timely disposal of the proceedings at a cost affordable by the respective parties. To achieve this, the court is entitled, where it deems appropriate, to direct that a matter filed in one place be heard by the same court sitting at a different place. The decision whether or not to order transfer depends largely on the facts and the circumstances of a particular case.

10. In the present case, it is not disputed that the subject matter of this suit is situate in Meru County. The Plaintiff and the defendant as well as their witnesses are also said to reside in Meru County. I am therefore persuaded that this is a matter that should be heard by the ELC Meru.

11. Accordingly, this matter will be and is hereby transferred to the ELC Registry at Meru where further proceedings will be undertaken.

12. Costs shall be in the cause.

Dated, signed and delivered at Chuka this **15<sup>th</sup> day of November, 2021** in the presence of:

CA: Ndegwa

Mwangi Maina for Plaintiff

Muthomi for Defendant

**C. K. YANO,**

**JUDGE.**