



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC MISC NO. E004 OF 2020

PHILIP KITHAKA..... APPLICANT

VERSUS

MERCY KARIMI NYAGA RESPONDENT

JUDGMENT

1. This miscellaneous suit was filed through a notice of motion dated 29th September 2020 brought pursuant to Section 3A, 18 & 63 of the Civil Procedure Act, Order 51 rule 1 and Order 37 Rule 17 of the Civil Procedure Rules, Article 50 and 159 of the Constitution of Kenya 2010 and Section 38 of the Limitation of Actions Act Cap 22. The applicant seeks orders that Suit NO. CMCC No. 140 of 2019 be transferred from the Chief Magistrates Court Meru to the Environment and Land Court at Meru for hearing and final determination and for costs.

2. The application is based on the grounds on the face of it and on the supporting affidavit of **Philip Kithaka**, the applicant. He avers that he was sued by the respondent in the magistrate's court, where he pleaded adverse possession in his counter claim, of which the magistrate's court lacks jurisdiction to entertain the counter claim. He further states that the respondent will not be prejudiced if the orders sought are granted.

3. The application is opposed by the respondent vide a replying affidavit dated 11th January 2021, who avers that the magistrate's court has jurisdiction to hear disputes relating to land including matters of adverse possession and as such the trial court's jurisdiction in CMCC ELC 140 of 2019 is proper and prays for the dismissal of the application with costs.

4. The court gave directions for the application to proceed by way of written submissions. The applicant filed his submissions on 15/2/2021. This court will only summarize those submissions in so far as they relate to the issue on whether adverse possession is a preserve of the High Court. The applicant submitted that by virtue of Section 38 of the Limitation of Action Act, Article 162 (2) of the Constitution of the Kenya and section 13 of the Environment and Land Court Act, the Environment and Lands Court is the right court having jurisdiction to hear and entertain matters of adverse possession.

5. The respondent vide submissions dated 5th November, 2021, submitted that Section 26 (3) and (4) of the Environment and Land Court Act and section 9 of the Magistrates Courts Act provide for jurisdiction of duly gazetted magistrates courts in relation to land and environment disputes generally. To this end, the respondent avers that the trial court has proper jurisdiction as the presiding magistrate was duly gazetted in Gazette Notice No. 1472 dated 1st March, 2016 and the pecuniary value of the subject matter is also within her jurisdiction. She contends that the applicant has failed to demonstrate why the court should exercise its powers in favour of the applicant and therefore prays for the dismissal of the application with costs. She relied on the case of **Patrick Ndegwa Munyua V Benjamin Kiiru Mwangi & Another [2020]eKLR.**

6. The issue before court for determination is whether the trial court has jurisdiction to hear and determine a claim of adverse possession and whether the court should transfer the case to this court.

7. Section 9(a) of the Magistrate's court provides confers jurisdiction upon the magistrate courts in the following terms;

"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 (Cap. 12A) 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;

(ii) *compulsory acquisition of land;*

(iii) *land administration and management;*

(iv) *public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and*

(v) *environment and land generally”.*

8. **Section 26 of the Environment & Land Act** provides;

(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.

(4) Appeals on matters from the designated magistrate's courts shall lie with the Environment and Land Court”.

9. It is evident that section 26 of the Environment and Land Court Act gives Magistrates court jurisdiction to handle environment and land related disputes. In **Patrick Ndegwa Munyua v Benjamin Kiiru Mwangi & another [2020] eKLR** which has been cited by the respondent, it was held that;

“The upshot of the provisions at Section 26 (3) and (4) of the Environment and Land Court Act, 2011 and Section 9 (a) of the Magistrates’ Courts Act, 2015 is that magistrates who are duly gazetted and have the requisite pecuniary jurisdiction have jurisdiction and power to handle cases involving occupation of and title to land. Claims in the nature of adverse possession involve title to land since the claimant ultimately seeks an order that he be registered as the proprietor of the land. In view of the foregoing discourse, there are ample reasons based on the express provisions of Section 26 (3) and (4) of the Environment and Land Court Act, 2011 and Section 9 (a) of the Magistrates’ Courts Act, 2015, the principles of interpretation of the constitution as well as the principles of the constitution such as devolution, access to services and access to justice for all persons, to find as I hereby do, that so long as presided over by a magistrate who is duly gazetted under Section 26 (3) of the Environment and Land Court Act, 2011 and who has the requisite pecuniary jurisdiction, magistrates’ courts have jurisdiction and power to handle cases involving claims of adverse possession.”

10. It is clear that the case is properly before the trial court. Further, the applicant filed his defence and counterclaim dated 21st January, 2019 as per the documents annexed, while the instant application is dated 29th September 2020. I do find that there was inordinate delay in filing the current application.

11. In light of the foregoing analysis, I find that the current application lacks merits. This miscellaneous suit is hereby dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 14TH DAY OF JULY, 2021 IN PRESENCE OF:

C/A: Kananu

Mrs. Ntarangwi for respondent

Ms. Aketch V. for applicant

HON. LUCY. N. MBUGUA

ELC JUDGE