



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC MISC. APPLICATION NO. 61 OF 2019

LIBERTY MALL LIMITED..... APPLICANT

VERSUS

MERU COUNTY GOVERNMENT

NATIONAL LAND COMMISSION..... RESPONDENTS

RULING

1. This notice of motion dated 30/9/2019 is brought under section 3A, 17 and 18 (1) (b) of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules, where applicant is seeking an order for the re-transfer of Nkubu PM ELC No. 93 of 2018 from Nkubu Principle Magistrates Court to Meru Environment and Land Court for hearing and determination, and that costs be in the cause.

2. The application is based on the grounds on the face of it and the supporting affidavit of Tom O. K'opere advocate for the applicant who stated that this case was originally filed in the Environment and Land Court at Meru on 17/7/17 as ELC No. 214 of 2017. The 1st respondent entered appearance on 27/9/17 and filed a defence on 3/10/17 but the 2nd respondent did not. Through a notice to show cause dated, 31/1/2019, the advocate learnt that this court on its own motion transferred the case to the Principle Magistrates court in Nkubu. The matter came up for hearing on 18/9/2019, when he pointed out to the court that the cause of action involved constitutional issues relating to violation of property rights under Articles 2, 17 and 40 of the constitution and compensation for compulsory acquisition of land whose values was beyond the courts pecuniary jurisdiction under section 7 (1) (a) of The Magistrates Court Act and that constitutional issues have been raised.

3. The application was opposed by Hosea Mutembei advocate for the 1st defendant who contended that the issues raised in the plaintiff's suit can well be resolved by Nkubu PMCC court. The suit raises no constitutional issues but a mere compensation of Ksh. 8,625,000 which the subordinate court has jurisdiction to hear. The matter was commenced by way of plaint and not a constitutional petition. The suit is based on encroachment an issue that can be determined in a magistrate's court and additionally section II of the Civil Procedure Act provides that every suit shall be instituted in the court of the lowest grade competent to try it.

4. I have carefully perused through the application, affidavits and submission and the issue for determination is **whether to re-transfer Nkubu PM ELC No. 93 of 2018 back to the Meru Environment and Land Court?**

5. **Section 11** of the **Civil Procedure Act** stipulates as follows :-

“Every suit shall be instituted in the Court of the lowest grade competent to try it.....”.

6. Under **Section 18** of the **Civil Procedure Act**, the High Court has wide powers to transfer any suit pending before it to a subordinate Court competent to try it or transfer any suit from a subordinate Court to itself or transfer any suit from one subordinate Court to another.

7. **Section 12** of the **Civil Procedure Act** also provides that a suit for recovery of immovable property ***“shall be instituted in the Court within the local limits of whose jurisdiction the property is situated”.***

8. Additionally, **Section 7 (1) (c)** of the **Magistrates Act** provides that

“A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed..... ten million shillings, where the court is presided over by a principal magistrate”.

9. In consideration of the above authorities and on perusal of the record it is clear that the Principles Magistrates court at Nkubu has the pecuniary jurisdiction to determine the dispute and there is nothing to suggest that there is an issue of law or other good or sufficient reason

which would warrant the transfer of the suit from Nkubu court. The applicant has also not availed any valuation report to gauge the value of the subject matter. Parties have a right to litigate through all the hierachial tiers in the dispensation of justice.

10. Consequently, I find that the application herein is without merits and the same is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 26TH FEBRUARY, 2020 IN THE PRESENCE OF:-

C/A: Kananu

Abubakar holding brief for Kopere for applicant

Gikonyo holding brief for Mugambi for 1st respondent

HON. LUCY. N. MBUGUA

ELC JUDGE