

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC MISCELLANEOUS APPLICATION NO. 4 OF 2020

KASIGAU RANCHING (D.A) COMPANY LIMITED...APPLICANT

VERSUS

LILIAN MERCY MUTUA T/A LILIAN M. GEMS....RESPONDENT

RULING

(Application to transfer suits from the Magistrate's Court to the Environment and Land Court; suits outside the pecuniary jurisdiction of the Magistrate's Court; application allowed)

1. The application before me is that dated 21 February 2020. It seeks orders that the suit Voi CMCC (ELC) No. 11 of 2019 and Voi CMCC (ELC) No. 16 of 2018 be consolidated and be transferred to this court for disposal. There are several reasons given for the need for the prayers.
2. In the supporting affidavit, it is averred that the two suits are related and concern mining activities in the land parcel LR No. 12180. It is stated that the value of the minerals per year in the disputed mining location is KShs. 170,000,000/= which would go beyond the pecuniary jurisdiction of the Voi Magistrate's Court. The applicant has also annexed the complaints in the two suits and has said that they are related.
3. I have gone through the complaints. The suit Voi SPMCC (ELC) No. 16 of 2018 was filed on 18 July 2018 with Kasigau Ranching (D.A) Company Limited (the applicant herein) being plaintiff. The defendant is one Lilian Mercy Mutua t/s Lilian M. Gems. In that suit, the applicant avers to be the registered owner of the land LR No. 12180 situated in Taita Taveta County. It is claimed that the defendant has trespassed into this land and is undertaking illegal mining activities in location reference No. 1459/1-10 Machungwa "A" Kasigau Ranch. The applicant avers that the defendant purchased the mining location from one David Muthui Kariuki who transferred the mining location to her without the authority of the plaintiff. In the suit, the applicant wishes to have the said Lilian Mercy Mutua evicted from the suit land and permanently restrained from it.
4. The suit Voi SPMCC (ELC) No. 11 of 2019 is filed by Lilian Mercy Mutua as plaintiff. The defendants are 27 in number, the 2nd defendant being the Chairman of Kasigau Ranching (D.A) Company Limited. In that suit, the said Lilian Mercy Mutua, claims to have purchased mining rights in location reference No. 1459/1-10 from a previous miner, who had rights over it acquired from the applicant. She sued the defendants for interfering with her activities in this land. In the suit, she has sought orders for a declaration that she is the legal owner of the said mining location; eviction of the defendants; a permanent injunction to restrain them from this location; and damages.
5. None of the respondents have opposed the application.
6. It is apparent to me that the two suits are related and they ought to be consolidated and heard together. The valuation of the site is not disputed, and it is clear that it goes beyond the pecuniary jurisdiction of the Magistrate's Court.
7. I will thus allow the application to transfer the suits to the Environment and Land Court at Mombasa for disposal, but not without a reprimand to the parties and counsel, for filing in the Magistrate's Court, a suit that was clearly outside the jurisdiction of the said court.
8. I will not make any orders as to costs.

DATED AND DELIVERED THIS 17TH DAY OF JUNE 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA