



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

MISC APPLICATION NO 232 OF 2013

ZACHARIA O ONDIEKIPLAINTIFF

VERSUS

PATRICK KURESOIDEFENDANT

RULING

(Transfer of suit; suit initiated in the Magistrate's Court; Counterclaim for adverse possession; Magistrate's Court not having jurisdiction on adverse possession; suit ordered transferred to superior court)

The application herein seeks orders to have the suit Nakuru Chief Magistrate's Civil Suit No. 363 of 2009, transferred to this court for hearing and disposal. The main ground upon which the application is founded is that the defendant in the said suit, has a counterclaim by way of adverse possession, which cannot be determined by the magistrate's court for want of jurisdiction. The applicant is plaintiff in the suit Nakuru CMCC No. 363 of 2009. To the application, a copy of the Defence and Counterclaim was annexed.

I have looked at the pleadings in the suit Nakuru CMCC No. 363 of 2009. The suit was commenced by way of plaint on 9 April 2009. The case of the plaintiff is for recovery of the land parcel Nakuru/Ngongongeri/47 which he complains the defendant has illegally taken possession of. The defendant filed a defence which he later amended to include a counterclaim. He has refuted the plaintiff's allegations, and in the counterclaim, he has contended that he is entitled to the suit land by way of adverse possession.

A claim for adverse possession cannot be heard by the subordinate court in line with the provisions of Order 37 of the Civil Procedure Rules. The alternative of course, was for the defendant to file a new suit, but even then, to avoid the possibility of conflicting judgments, the lower court file would need to be called to this court. To avoid a lot of hitches, it is best that the lower court file be brought to this court for all issues to be determined. I therefore find that the application has merit. I order the file Nakuru CMCC No. 363 of 2009 to be transferred to this court for hearing and disposal.

I make no orders as to costs.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 4th February 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT AT NAKURU

In presence of :-

Mr Ombui holding brief for Mrs Ndeda for applicant.

Mrs C M Kirui for the respondent

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT NAKURU