



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL SUIT NO. 17 OF 2010**

**JOSEPH GICHINA MUHORO ..... PLAINTIFF**

**V E R S U S**

- 1. MARY LIGALE**
- 2. JULIUS LOURIEN**
- 3. JANE LOURIEN**
- 4. KENNEDY PANYAKO**
- 5. PETER WANDABWA**
- 6. JOTHAM ONDITI ..... DEFENDANTS**

**R U L I N G**

1. The applicant in the notice of motion dated 1st August, 2013 is Joseph Gichina Muhoro who is the plaintiff in this case. The applicant had filed the present suit claiming that the defendants had encroached on to his land Parcel No. West Pokot Keringet "A"/62. He prayed for an order of eviction and permanent injunction against the defendants.
2. Hearing of the main suit started on 20/3/2013 when the plaintiff testified. While the plaintiff was being cross-examined, it emerged that the plaintiff's claim was based on alleged encroachment of his land by the defendants. The applicant had testified that his land neighbours 13 individuals but it is only the six defendants who have encroached on his land. It is at this time that the court considered it necessary to give an order that the District Surveyor West Pokot do visit the land in dispute and determine whether there is any encroachment. The survey fees was to be shared.
3. The applicant herein refused to co-operate with the Surveyor arguing that a survey had been carried out earlier on and that he saw no need for another survey being carried out. The District surveyor was also unable to carry out the survey in absence of the applicant.
4. On 30/7/2013 the applicant took the witness box and cross-examination started. In the middle of the cross-examination by Mr. Onyancha for 2nd, 3rd and 4th defendant the applicant stated that he was not going to answer any questions and demanded that his file be forwarded to the National Land Commission for the matter to be determined. The applicant was then asked to make a formal application to that effect. It is on this basis that he made the application herein.
5. In the application, the applicant contends that he is an internally displaced person residing at Longonot in Naivasha area. That it will therefore be convenient for him if this file is transferred to the National Land Commission in Nairobi. The applicant further contends that he is claiming general and exemplary damages which are over a half a billion and that he should therefore be resettled on his own land as soon as possible to avoid him incurring further costs.
6. The application was opposed by the 2nd, 3rd and 4th respondents through grounds of opposition filed by their advocate on 13/9/2013.
7. The respondents contend that this application is not brought in good faith and that there is no provision in the National Land Commission requiring a competent court to transfer cases filed

- before it to the National Land Commission. The respondents also contend that they reside in West Pokot where all their witnesses come from and that this court has jurisdiction to hear and determine this suit.
8. The applicant herein is acting in person having previously acted through lawyers. I have given due consideration of his application and I have now to decide whether the same should be granted. The functions of the National Land Commission are set out in section 5 of the National Land Commission Act. Its functions include initiating investigations, on its own initiative or on a complaint, into present or historical land, injustices, and recommend appropriate redress. Its mandate also include encouraging the application of traditional dispute resolution mechanisms in land disputes. Its other mandate is largely on matters to do with public land.
  9. In the present case I do not think that the applicant has either suffered a present or historical land injustice to warrant intervention of the National Land Commission. The applicant's claim is a simple one; that of alleged encroachment on to his land. This is a matter which can easily be addressed by the Environment and Land court. The applicant is trying to bring in the issue of Post election skirmishes of 2007/2008. This has nothing to do with the present case in court. The compensation which he seeks is not part of his claim before court. He is at liberty to pursue what he suffered as a result of the skirmishes but as matters stand now, that claim is not before court. He can lodge it and direct it to proper parties. What is at hand is a dispute which can be competently handled by this court.
  10. The applicant seems to suggest that his request for the matter to be transferred to the National Land Commission is because he is based in Naivasha. This cannot be a ground for this court to transfer this case to National Land Commission at Nairobi. It appears that there is a misconception by the applicant as well as other persons that the National Land Commission is the ultimate arbitrator of all land issues. Whereas the National Land Commission is an important commission, its mandate is well spelt out and it is high time litigants were educated about its mandate. The commission has its role to do and courts too have their part. In the present case I do think that the applicant's application can be allowed. Let the applicant proceed to fix his case for hearing and determination. The upshot of this is that his application fails. The same is hereby dismissed with no order as to costs.

It is so ordered.

Dated, signed and delivered at Kitale on this 1st day of April, 2014.

**E. OBAGA,**

**JUDGE**

In the presence of Plaintiff/Applicant. Court Clerk – Lobolia.

**E. OBAGA,**

**JUDGE**

**01/04/2014**