



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
MISC APPLICATION NO. 407 OF 2013
AND
ELC 625 OF 2013

DR JULIUS OGATO.....PLAINTIFF/APPLICANT

VERSUS

JOHN MACHARIA.....1ST DEFENDANT/ RESPONDENT

PAULINE RUTO.....2ND DEFENDANT/ RESPONDENT

ANTONY MUKUNDI NGERE.....3RD DEFENDANT/ RESPONDENT

RULING

- 1. Dr Julius Ogato** filed before this court Civil suit No. ELC 625 of 2013 simultaneously with a Notice of Motion dated **11th December, 2013**. The suit sought declaratory orders whereas the notice of motion sought interim orders to restrain the 1st defendant from charging, leasing, mortgaging, selling, perpetrating acts of waste, attempting to interfere with the plaintiff's possession of title **No.Njoro/Ngata/Block1/6182** (suit property) by entering therein and damaging his trees, crops, banana fruits, fences and other developments.
2. When this application came before me on **16th December, 2013** I ordered that this suit be stayed until a similar matter ELC 487 of 2013 transferred to the Chief Magistrate's court was heard and determined.
3. Dissatisfied with this order, the applicant on **23rd January, 2014** filed a miscellaneous application before this court seeking orders to withdraw suit No. 1082 of 2013 formerly ELC 487 of 2013 from the Chief Magistrate's court and transfer the same to this court and further filed a notice of motion on **3rd February, 2014** seeking that the orders of stay issued on **16th of December, 2013** be reviewed.
4. These are the two applications before me for determination which I have perused and they appear to me to be straight forward. Counsels for both parties seem to share the view that these files should be consolidated and determined by the Environment and Land Court and even recorded a consent to this effect on **12th February, 2014**. Counsels have challenged the jurisdiction of the Chief Magistrate's court in handling Land matters.

5. The powers of this court are donated by **Article 162 (2)** of the Constitution of Kenya, **Section 13** of the **Environment and Land Court Act** and **section 150** of the **Land Act 2012**. This court has both original and appellate jurisdiction to handle Environment and Land matters. Having considered the applications, the affidavits therein and submissions by the respective counsels, I will allow the two applications and direct that Civil suit No. 1082 of 2013 formerly ELC 487 of 2013 be transferred back to this court and be consolidated with ELC 625 of 2013 for eventual hearing and disposal. ELC No. 625 of 2013 will be the lead file and the defendant in Civil suit No. 1082 of 2013 will be the 1st defendant herein. Costs will be as agreed by the parties in the consent signed on **12th February, 2014**. The Deputy Registrar is directed accordingly.

6. One final issue that must be addressed. It is clear from the pleadings that the plaintiff is in possession of the suit property. To maintain peace therein, status quo shall be maintained as follows; the plaintiff shall remain in possession of the suit property but is restrained from further construction therein. Both the plaintiff and defendants in this suit are restrained from wasting, damaging, charging, leasing, alienating, selling and/or transferring the suit property to third parties pending the hearing and determination of this suit. Parties to comply with **Order 11 of the Civil Procedure Rules** within 30 days and have the matter set down for pretrial.

Orders accordingly.

Dated, signed and delivered this 11th day of July 2014

L N WAITHAKA

JUDGE

PRESENT

Mr Obutu holding brief for Mr Omae for plaintiff

Mr Magata for the 2nd/3rd respondent

N/A for 1st respondent.

Emmanuel Maelo: Court Clerk.

L N WAITHAKA

JUDGE