



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC MISC. CASE NO. 17 OF 2020

MUSA NDALIRO MUCHELULE

JUMA OKONYA ODUOR.....APPLICANT

VERSUS

LAURENCE ESHIBUKO

EVANS MURUNGA SHIBUKO

MELVINS OCHIENG NYAMOLO

DERRICK SHIKANDA SHIBUKO

LAND REGISTRAR, KAKAMEGA.....RESPONDENTS

RULING

The application is dated 11th August 2020 and is brought under Section 3A and Order 40 rule (1) & Rule (6) and Order 50 rule (1) and High Court Vacation Rules, Judicature Act, Section 5 & 8 seeking the following orders;

1. That the present application and deserves to be heard during the vacation and exparte in the 1st instance.
2. That this honourable court be pleased to transfer Kakamega MCL & E case No. 196 of 2018 to this honourable court for hearing and final determination during this vacation.
3. That costs be provided for.

It is based on the following grounds that the applicants herein had filed this suit in this honourable court at first but this honourable court used its power to transfer it to the lower court. That when the case came up for hearing on 13th August, 2019 it was established that Kakamega Chief Magistrate's Court lacks jurisdiction to cancel a land title which was the main issue to be determined in this matter. That it shall be in the interest of justice to have the said suit transferred to this honourable court for hearing and determination since it has jurisdiction to handle such.

The respondents submitted that the applicant is represented in Kakamega MCL & E No. 196 of 2018 by the firm of Osundwa & Company Advocates. That the applicant cannot therefore purport to or arrogate to himself the right to file an application of this nature before first complying with the requirements of order 9 rule 8 of the Civil Procedure Rules, 2010. That the said order 9 rule 8 requires a party who after having sued or defended by advocate and intends to act in person to first give notice of intention to act in person, such requirement being mandatory given the import of the phrase "shall give" used under the rule. That but more importantly, the order for transfer does not lie in view of the persuasive decision of the High court in Patrick Ndegwa Munyua vs. Benjamin Kiiru Mwangi & Another (2020) eKLR particularly where the applicant herein has not attempted or at all to demonstrate that the subject matter of the suit he seeks to transfer is without the pecuniary jurisdiction of the magistrate's court at Kakamega.

This court has considered the application and the submissions therein. In the case of Patrick Ndegwa Munyua vs Benjamin Kiiru Mwangi & Another (2020) eKLR the court held that;

*"In view of the foregoing discourse, there are ample reasons based on the express provisions of **Section 26 (3) and (4) of the Environment and Land Court Act, 2011 and Section 9 (a) of the Magistrates' Courts Act, 2015, the principles of interpretation of***

*the constitution as well as the principles of the constitution such as devolution, access to services and access to justice for all persons, to find as I hereby do, that so long as presided over by a magistrate who is duly gazetted under **Section 26 (3)** of the **Environment and Land Court Act, 2011** and who has the requisite pecuniary jurisdiction, magistrates' courts have jurisdiction and power to handle cases involving claims of adverse possession.”*

I hold the same view and find that the magistrates do have jurisdiction to entertain claims based on adverse possession. I find this application is not merited and I dismiss it with costs to the respondents.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 27TH OCTOBER 2020.

N.A. MATHEKA

JUDGE