



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISCELLANEOUS APPLICATION NO 56 OF 2013

ZACHARIAH NJUGUNA WAITHAKA..... APPLICANT

V E R S U S

AGNES WANGONYO NGUGI.....RESPONDENT

R U L I N G

1. This application (**notice of motion dated 30th January, 2013**) seeks the main order that the court do withdraw **Kiambu CMCC No 2 of 2013** from that court and transfer the same to the **Environmental and Land Law Division** of this Court for hearing and disposal. It is expressed to be brought under **sections 1A, 1B, 3A, 18(1)(b)(i)** of the **Civil Procedure Act, Cap 21** (the **Act**) and **Order 51 rule 1,3,7,8,10** of the **Civil Procedure Rules** (the **Rules**). The Applicant is the defendant in the suit while the Respondent is the plaintiff. The plaint seeks the main reliefs of a permanent injunction to restrain the defendant from interfering with the plaintiff's use and development of the suit property, and also an order for vacant possession and in default forcible eviction.
2. The main ground for the application appearing on the face thereof is that the Kiambu Chief Magistrate's court "lacks territorial jurisdiction to cancel and/or revoke a title deed that has issued". I cannot understand this ground at all as the plaintiff has not sought cancellation or revocation of title in the plaint which is annexed to the application. There is a supporting affidavit sworn by the Applicant.
3. The application is opposed by the Respondent as set out in the **replying affidavit filed on 7th March, 2013** sworn by her. She asserts that the main aim of the Applicant in filing the application is to derail the main suit she has filed.
4. I have considered the submissions of the learned counsels appearing. Section 18(1)(b)(i) of the Act provides as follows -

"18. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be hear, or of its own motion without such notice, the High Court may at any stage -

(a)....

(b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter -

(i) try or dispose of the same."

5. The suit concerning this application was filed on 4th January 2013 after the Chief Justice issued **“Practice Directions on Proceedings relating to the Environment and the Use and Occupation of and Title to Land”** as follows -

"In exercise of the powers conferred by the Sixth Schedule, Part 5, section 22 of the Constitution of Kenya, 2010 and in pursuance of section 30(1) and (2) of the Environmental and Land Court Act (No. 19 of 2011) of the Laws of Kenya on transitional provisions for proceedings relating to the environment and the use and occupation of and title to land as read with section 31 of the Act, the Chief Justice makes the following practice directions following the establishment of the Environment and Land Court:

1. **All proceedings relating to the environment and the use and occupation of, and title to land pending before the Court of Appeal shall continue to be heard and determined by the same court.**
2. **All pending judgments arising out of proceedings relating to the environment and the use and occupation of, and title to land pending before the High Court shall be delivered by the same court.**
3. **All part-heard cases relating to the environment and the use and occupation of, and title to land pending before the High Court shall continue to be heard by the same court.**
4. **All cases relating to the environment and the use and occupation of, and title to land which have hitherto been filed at the High Court and where hearing in relation thereto has yet to commence, shall be transferred to the Environment and Land Court as directed by the Chief Registrar.**
5. **All proceedings which were pending before the resident magistrate's court having been transferred thereto from the now defunct District Land Disputes Tribunals shall continue to be heard and determined by the same courts.**
6. **All new cases relating to the environment and the use and occupation of and title to land shall be filed in the nearest Environment and Land Court for hearing and determination by the said court.**

6. In view of Direction 6 above by the Chief Justice I will allow the application. **Kiambu CMCC No. 2 of 2013 is hereby withdrawn from that court and transferred to the Environmental and Land Court, Nairobi for hearing and disposal.** Costs of this application shall be in the main suit. It is so ordered.

DATED AT NAIROBI THIS 30TH DAY OF APRIL 2013

H.P.G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 3RD DAY OF MAY 2013