



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
MISC. APPLICATION NO. 48 OF 2013

MICHAEL KINGU KIGIA.....APPLICANT

VERSUS

AGRICULTURAL FINANCE CORPORATION.....RESPONDENT

R U L I N G

The application herein is dated 3rd July, 2013 and seeks orders that:

1. THAT this Application be certified as urgent and it be heard *ex parte* in the first instance.
2. THAT this Honourable court be pleased to stay any execution OR proceeding in subordinate Court No. CMC 257 of 1996 the intended High Court suit is in place/formalized(sic).
3. THAT the Hon. Court be placed (sic) to Order for transfer of Chief Magistrate court civil Case No. 256 of 1996 to High Court at Meru for transfer for hearing and final disposal.
4. THAT cost of this case in cause.

The matter was heard *ex parte* on 4.7.2013 when the applicant told me that the Court in CMCC 257 of 1997 had declared that it had no jurisdiction and had advised him to bring his case to this Court. He sought prayers 1, 2 and 3 In his Application. He intimated that the respondent was demanding from him a sum of Kshs.1,600,000/=.

I certified the matter urgent and granted prayer 2 in the Application in the following terms:

“Prayer for stay of execution or stay of proceedings in CMC 257 of 1996 is allowed subject to the applicant depositing Kshs.1,500,000/= in court as mandatorily required by Order 42 Rule 6 (2) (b) pending hearing and determination of this application.”

I also directed that the Application be heard on 15.7.2013.

Before the application was heard, the Applicant filed another Application dated 5th July, 2013 seeking orders:

1. **That this Application be certified as urgent and it be heard *Ex- parte* in the 1st instance.**
2. **That this Honourable Court do issue an Order to Review Order issued on 4th July, 2013 paragraph 2 on security as on record in subordinate Court CMC 257 of 1996 is a fresh**

matter hence no judgment/decreed or order to warrant compliance with Civil Procedure Rules Order 46 (2) (b).

- 3. That after Honourable court allows the Review of the above paragraph 2, the Honourable Court be pleased to order for transfer for hearing and final disposal.**
- 4. That cost of this case be in cause.**

The Application dated 3rd July 2013 was heard interpartes on 29.8.2013.

The Applicant raised issues such as non-existence of rent arrears and non-compliance with the law by the Respondent or his advocate. His main argument was that the lower Court said that it had no jurisdiction. Perusing the Lower court's proceedings of 2nd July, 2013 the Applicant is recorded as having said: "The land in question is 15 acres and worth about Kshs.15,000,000. This is my estimate. It is commercial land. In the circumstance that the maximum jurisdiction of Chief Magistrate is Kshs.7,000,000, I pray that the matter be SOG so that I can file an Application at the Environment and Land Court. I pray for status quo to be maintained."

The record has Hon. R. Kimingi, Chief Magistrate stating: "As Plaintiff wishes to move the matter to the Environment and Land Court, file is referred to the registry for Plaintiff to take appropriate steps." I note that the court did not say that it did not have jurisdiction.

The Respondent in its submissions through advocate Ngaira argued that the Applicant's Application dated 5th July, 2013 seeking orders for the Court to review its orders was incompetent as there was no apparent error on the face of the record. He also argued that issues such as to how much money was owed to the respondent were issues which could only be ventilated during the hearing of the main suit. The Respondent lamented that the primary case was filed in 1996 and felt the applicant only wanted to delay it further.

I find that many of the issues raised by both parties can only be satisfactorily handled during the hearing of the main suit. I do note that his miscellaneous application is a suit in itself. It is not an appeal.

The Applicant in his supporting grounds for this Application, does not bring out the issue of lack of jurisdiction but he says at paragraph 15 of his supporting affidavit that the Chief Magistrate had advised him to proceed to this Court as the value of his 15 acres of land exceeded the pecuniary jurisdiction of the Lower Court.

Be it as it may, the Applicant admits that the Chief Magistrate has a pecuniary jurisdiction of Kshs.7,000,000/=. During the ex parte hearing of his Application on 4.7.2013, he told this Court that the Respondent was demanding from him the sum of Kshs.1,600,000. This is within the pecuniary jurisdiction of the Lower Court. The suit before the Lower Court does not concern the value of the Applicant's land that he offered as security to the respondent which he estimates at Kshs.15,000,000/=. Indeed the Plaintiff shows that the suit was not a money suit originally. The suit should therefore proceed in the Chief Magistrate's court .

I now turn to the Applicant's Application dated 5th July, 2013. I opine that my finding that the suit in CMC 257 of 1996 should proceed in the Lower court effectively disposes of this Application. It is, therefore, dismissed with no order as to costs.

Having considered all the submissions and averments of the parties, I reiterate my finding that the suit in CMC 257 of 1996 should proceed in the Chief Magistrate's Court, Meru, for hearing and determination.

In the circumstances, I order as follows:

1. the applicant's application dated 3.7.13 is dismissed.

2. I award costs to the Respondent.
3. This Ruling to be filed in CMC 257 of 1996 for the Chief Magistrate's attention.

For avoidance of doubt, proceedings in CMC 257 of 1996 should continue in the Lower Court until the suit is heard and determined.

I note that the suit in CMC 257 of 1996 has been in Court for the last seventeen years. Indeed the foreclosure notice dated 25.1.1996 issued by the respondent, and which spawned the suit, was claiming the sum of Kshs.136,722.55. It is necessary that old cases such as CMC 257 of 1996 should be heard expeditiously. As this Court has dismissed this Application, this Court will not entertain any other Application relating to this Miscellaneous Application. The court declares itself *functus officio*. Of course, the Applicant is at liberty to appeal to a higher Court. It is his right.

It so ordered.

Delivered at Meru this 11th day of October, 2013, in the presence of:

Cc. Mwonjaru

Michael Kungu Kigia – Applicant

Gatare h/b Ngaira for Respondent

P. M. NJOROGE

JUDGE