

REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT OF KENYA AT NAKURU

CIVIL SUIT NO 23 OF 2012

NAIVASHA QUARRY PROJECT LIMITED....PLAINATIFF

VERSUS

KENYA WILDLIFE SERVICE.....DEFENDANT

RULING

This is an application by Notice of Motion dated 12th November,2012. The applicant seeks the following orders among others: That this suit be transferred to the Environment and Land Court, Nairobi for hearing and final determination.

The application is premised on the grounds that the plaintiff's members in the year 2001, threatened the Defendant's counsel and employees with violence and or physical injury. Again on 28th June, 2012, the plaintiffs members acted in a similar manner towards the Defendants officers. To enable the defendants counsel, its officers and witnesses feel secure this suit should be transferred to the Environment and Land Court, Nairobi for hearing and final determination.

In his supporting affidavit sworn on 12th November, 2012 Patrick Lutta (Counsel for the Defendant,) depones that he represents the Defendant in several matters, some in Naivasha. In 2001, after attending the hearing of SRMCC 290 of 2000 he attempted to effect service upon the plaintiffs in their offices within Naivasha town. He was accompanied by police escort and Mr Muriuki, a security officer of the Defendant. The plaintiffs members on that day threatened to lynch them and set their vehicle ablaze but they were restrained by the police officers who had accompanied them. They warned him not to interfere with issues relating to the suit property. Again on or about 28th June, 2012 the plaintiff members became very aggressive towards the Defendant's officers to the extent that Police had to be called in to maintain peace. The deponent now fears for his safety and is not comfortable travelling from Nairobi to Nakuru and back to attend to this matter.

This application was first brought before me under certificate of urgency on 22nd February 2013. I certified the application urgent and directed that the applicants do serve the plaintiff/respondent with the hearing notice and return for interparties hearing on 21stMay 2013. An affidavit of service sworn on 11th June, 2013 by Elijah Moki John was filed stating that the plaintiff was served.

The application by the defence counsel is straight forward. In the replying affidavit by the plaintiff the same is not opposed. I have read the supporting affidavit. Counsel for the defendant is concerned about his safety while conducting this matter in Nakuru. He has enumerated instances when he really felt threatened. He is a court officer and desires to conduct matters without intimidation or anxiety over his personal safety.

I therefore direct this cause be transferred to Nairobi for eventual hearing and disposal. The Deputy Registrar is directed accordingly.

Costs in the cause.

Dated signed and delivered in open court this 4th day of October 2013

L N WAITHAKA

JUDGE

Present

Mr Githui holding brief for Mr Lutta for Defendant/Applicant

N/A for the plaintiff/Respondent

Stephen Mwangi: Court Clerk

L N WAITHAKA

JUDGE