



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MERU

Miscellaneous 45 of 2012

HADIJA HAJI GALMA..... APPLICANT

VERSUS

ABDI AHMED KAWIR.....RESPONDENT

R U L I N G

The applicant in this case filed a Notice of Motion under section 1A, 1B,3, 3A and 18 (1) (B) of the Civil Procedure Act (Cap 21) Laws of Kenya and Order 51 Rule 1 of the Civil Procedure Rules. The said application seeks the following orders:

- 1. That this application be certified urgent and the same be heard ex-parte in the first instance.**
- 2. That there be temporary stay of proceedings/hearing of Isiolo PMCC No. 30 of 2011 pending interparties hearing of this application.**
- 3. That this honourable court be pleased to transfer Isiolo PMCC No. 30 of 2011 ABDI AHMED KAWIR VS HADIJA HAJI GALMA to this court for hearing and disposal of the same.**
- 4. That the costs of this application be costs in the cause.**

During the hearing of the application the applicant's counsel Mr. G. G. Gitonga submitted that they are relying on the grounds on the face of the application together with the supporting affidavit of the applicant. Besides the above, he also submitted that the reason for the application is that Isiolo Court has no jurisdiction to hear the suit. Apart from the above he also submitted that the cause of action relates to a parcel of land. According to the learned counsel Section 150 of the Land Act No. 6 states that all matters relating to land are supposed to be heard by a Land and Environment Court. He clarified that Isiolo Law Court does not have that particular court and therefore does not have the jurisdiction to hear that land matter. Secondly, he submitted that the value of the land exceeds the pecuniary jurisdiction of Isiolo Law courts. In addition to the above, he also submitted that the value of the land is Ksh.2.4 million as demonstrated by the valuation report. He also urged this court to take judicial notice of the pecuniary jurisdiction of Isiolo Law Courts. While referring to the replying affidavit he submitted that the respondent has not filed any valuation report to dispute the value of the land. Besides the above he also submitted that the respondent will not suffer any prejudice if the case is transferred from Isiolo to this court for trial and disposal. Apart from the above he also submitted that although the Land Act came into

force on 2nd May, 2012 it applies to land matters that were pending in the court. He also contended that the said land case was filed on 14th July, 2011. On the basis of the above he has urged this court to allow the application as prayed.

On the other hand the application has been opposed by Mr Mutuma who appeared for the respondent. In his submissions he has relied on the replying affidavit. According to the respondents counsel, the Isiolo court has jurisdiction to hear the matter which they had filed before the Land and Environment Act came into effect on 12th May, 2012. The respondent's counsel also submitted that the commencement of the Land and Environment Act was on 30th August, 2011. He clarified that both dates came into effect after they had filed their suit. In addition to the above the learned counsel referred this court to section 30 of the Environment and Land Act which states that all proceedings pending before any court shall continue to be heard by that court until the Environment and Land court came into operation. Further to the above he also submitted that up to now the said court has not come into operation. He also referred to Section 162 of the Land Act which relates to rights that shall be governed by the law that was in force. He interpreted that to mean that the Isiolo Court has the jurisdiction to hear the matter. As far as the issue of pecuniary jurisdiction is concerned the respondent's counsel submitted that the valuation report has been tailor made for this application. He also stated that the suit in Isiolo relates to an eviction and the same was supposed to proceed on 12th June, 2012. In conclusion the respondent's counsel submitted that the applicant should have first gone to Isiolo court to apply for dismissal of the case due to lack of jurisdiction. On the basis of the above the respondent's counsel has urged this court to dismiss the application with costs to his client.

This court has carefully considered the opposing submissions by the learned counsels. There is no doubt that the Land and Environment Act came into effect from 30th August 2011. The Preamble to the said Act states as follows:

“That it is an Act of Parliament to give effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provisions for its jurisdiction functions and powers and for connected purposes”. _

It is apparent that the case in dispute was actually filed on 13th July, 2011 at Isiolo Court. The attention of this court has been drawn to practice directions on proceedings relating to the environment and the use and occupation of untitled land which was issued by the honourable Chief Justice/President of Supreme Court of Kenya dated 9th February 2012. The said practice directions states as follows:

‘All proceedings relating to the environment and the use and occupation of, and title to land pending before the Court of Appeal, High Court, Subordinate Courts or Local Tribunal of competent jurisdiction other than Land Disputes Tribunals which existed under the now repealed Land Disputes Tribunals Act, No. 18 of 1990, shall continue to be heard and determined by the same Courts or Tribunal. Any proceedings which shall not have been concluded by the time the Environment and Land Court is established, shall be moved to the Court upon its establishment.’ _

In view of the above analysis I hereby dismiss the application dated 4th June, 2012 since the same has no merits. Costs of the application will be borne by the applicant. The said land case will proceed to be heard in Isiolo Court and in the event that the applicant wishes to raise the issue of jurisdiction then he is at liberty to do so in that particular court. After hearing both sides that particular court will be expected to make a considered ruling.

Those are the orders of this court.

MUGA APONDI

JUDGE

Ruling read, signed and delivered in open court in the presence of

G. G. GITONGA FOR APPLICANT

MUTUMA FOR RESPONDENT ABSENT

MUGA APONDI

JUDGE

4TH JULY, 2012