



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL CASE 172 OF 2012
MARIGAT GROUP RANCH & OTHERS.....PLAINTIFFS
VERSUS
WESLEY CHEPKOIMET & 19 OTHERS.....DEFENDANTS

RULING

The defence counsel, Mr. Kipkenei, filed a notice of preliminary objection dated 31/5/2012, to the effect that this court has no territorial jurisdiction to entertain this matter; that the affidavit is sworn by a stranger; that the applicants are imposters, masqueraders pursuing their own selfish interests; that the respondents are the bona fide members of the Ranch; that the Ranch no longer exists and that the application does not meet the threshold for grant of injunctions.

Mr. Kipkenei urged that the suit land is situate in Marigat, Baringo County and the nearest Chief Magistrate's Court is Kabarnet which falls under the jurisdiction of Eldoret High Court; that none of the defendants reside in Nakuru and therefore the suit should be struck off.

There was no objection to the preliminary objection as the plaintiff's counsel was absent.

Section 12 of the **Civil Procedure Act** provides for where a party will file suit in respect of immovable property. It provides that:-

“Subject to the pecuniary or other limitations prescribed by law, suits –

- (a) for the recovery of immovable property, with or without rent or profits;**
- (b) for the partition of immovable property;**
- (c) for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;**
- (d) for the determination of any other right to or interest in immovable property;**
- (e) for compensation for wrong to immovable property;**

(f) for the recovery of movable property actually under distraint or attachment.

Where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.”

In the instant case the plaintiffs’ claim relates to a claim to land described as Baringo/Marigat/1 measuring about 6644.07 Ha. Gazette Notice No. 1756 of 27/2/2009 clusters the various subordinate courts under different High Court stations all over the country which guides parties on where to file suits. Though the High Court has unlimited jurisdiction to hear matters from all over the country, **Section 12** of the **Civil Procedure Act** and the above Gazette Notice exist for purposes of good management and administration of the various courts in the country. Under the said gazette notice, Kabarnet Magistrate’s court falls under Eldoret High Court.

I have seen the plaint. For some reason, the plaint did not give a description of the defendants and their addresses. I think it was calculated to mislead this court as regards the residence of the defendants. The defendants claim to be residents of Marigat and the pleadings show that the suit land is situate in Marigat, Baringo County. I find that this suit is instituted in the wrong court. It should have been filed in Eldoret High Court. The other grounds raised in the preliminary objection are not points of law but need to be proved by adducing evidence. On the ground of jurisdiction alone, this suit is hereby struck out with costs to the defendants.

DATED and DELIVERED this 10th day of July, 2012.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Kemani for the plaintiffs

Mr. Olongi for the defendants

Kennedy – Court Clerk