



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

MISC. APPLICATION NO. 1 OF 2020

ELIDAH NJAMBI MAINA.....APPLICANT

VERSUS

STEPHEN MURIITHI.....1ST RESPONDENT

STEPHEN NJIRU NGURE.....2ND RESPONDENT

RULING

Introduction

The Applicant vide a Notice of Motion dated 6th January 2020 sought the following orders:-

(1) That this Honourable Court do withdraw Environment and Land Court Case No. 153 of 2019 from the Kerugoya Magistrate's Court and transfer the same to this Court for trial and disposal.

(2) That the costs of this application be provided for.

The said application is based on the following grounds:-

- (a) That the suit was filed on 18th September 2019, on behalf of the applicant by M/S Ngigi Gichoya & Co. Advocates.
- (b) That the 2nd defendant filed defence on 6th October 2019 and the 1st defendant filed defence on 14th November 2019.
- (c) That from the plaintiff's claim, it is clear that the suit's nature is a declaratory suit and seek cancellation of title deed of the 2nd defendant's owning L.R. MWEA/TEBERE/B/3634 and subsequent registration of the plaintiff as proprietor of the same.
- (d) That from the 1st and 2nd defendant's defence filed, it is clear that the 2nd defendant was awarded land by the Magistrate's Court in Wanguru in Arbitration Case No. 3 of 2011.
- (e) That being the case, the suit currently filed is challenging the fraudulent transactions and or suits carried out in the Magistrate's Court by the defendants and the orders emanating therefrom.
- (f) That it is clear that the Magistrate's Court has no power to declare that an order of another magistrate is a nullity in law and a magistrate has no power to seat on an appeal, a Judicial Review or a review of an order of another magistrate.
- (g) That it is only fair for this Court to withdraw the suit filed in the Magistrate's Court in the subordinate Court and thereafter try and dispose the same.

Applicant's Statement of Facts

The applicant in the supporting affidavit stated as follows:-

- (a) That she is the plaintiff in ELC Case No. 153 of 2019 in the Magistrate's Court at Kerugoya.
- (b) That in the said suit, she is claiming that the transfer of land parcel No. MWEA/TEBERE/B/3634 to the 2nd respondent be declared null

and void and cancellation of the 2nd defendant as proprietor and registration of her as proprietor of the aforesaid land.

(c) That the said suit emanates from the fact that the 1st and 2nd respondents defrauded her land parcel No. MWEA/TEBERE/B/3634 which she was buying from the 1st respondent.

(d) That the 1st respondent and the 2nd respondent entered appearance and filed their respective defences.

(e) That from the defence, it is clear there were other suits in respect of the same parcel of land and it is clear that the 2nd respondent was awarded the land by tribunal award which was adopted in Wanguru Arbitration Case No. 3 of 2011 without her knowledge and that of the 1st respondent.

(f) That her suit is a declaratory suit in nature challenging processes used by the 2nd respondent to annex the suit land MWEA/TEBERE/B/3634 which it is clear he was awarded by Court processes amongst other fraudulent means which she is seeking to be declared null and void.

(g) That she has done her research and has obtained proceedings from the suit filed i.e. Wanguru Arbitration 3 of 2011 which came to her knowledge after filing the current suit and ascertained of its existence.

(h) That it is thus clear that her suit ELC Case No. 153 of 2019 filed in the Magistrate's Court can only be heard and determined by this Court.

(i) That it is within her knowledge that a magistrate cannot sit on a review, a Judicial Review or purport to sit and determine an appeal from an order or decree of another magistrate.

(j) That it is only fair that this Honourable Court does withdraw ELC Case No. 153 of 2019 currently pending before the Magistrate Court at Kerugoya and transfer the same to this Court for trial and disposal.

(k) That whereas the subject matter is located in Mwea East in the geographical jurisdiction of Wanguru Court, that Court has no jurisdiction since the 2nd defendant moved the same Court in Arbitration Case No. 3 of 2011 and was awarded the suit property in a clandestine means using fraudulent Court process matters which are admitted to by the 1st respondent in his defence statement filed in Court and annexed to her application as annexures EN 2a of the supporting affidavit of her application.

(l) That the subject matter of SRMCC No. 122 of 2009 was L.R. MWEA/TEBERE/B/2278 and which we consented at execution stage that he does transfer to her L.R. MWEA/TEBERE/B/2280.

(m) That SRMCC No. 19 of 2013 relates to removal of a caution on the suit land but the counter-claim was in relation to another land MWEA/TEBERE/B/746.

(n) That SRMCC No. 19 of 2013 has since been abandoned and she had applied to enjoin as a party but her application was dismissed.

(o) That she had filed this case since she had purchased the suit land from the 1st respondent but using clandestine means via fraudulent processes, the 2nd respondent got the title deed.

(p) That I discovered these fraudulent processes and they are confirmed by the defences filed in her current suit pending before the Magistrate Court in Kerugoya.

(q) That as such, her application has merit and this Court should allow it since dismissing the same will be kicking her out without affording her rights to be heard.

(r) That she has never filed any suit against the respondents herein relating to fraud and the subject matter again other than the current suit pending before the Magistrate Court which she seeks transferred to this Court.

(s) That she had instructed her former Advocates on record to file the case in the ELC Court but instead it was filed in the Magistrate's Court.

(t) That her declaratory suit cannot be heard by another magistrate, the 2nd respondent having used a clandestine Court process and obtained a title deed without her knowledge and that of the 1st respondent as admitted.

(u) That her application is mainly to transfer the file to this Court but the 2nd respondent opposition and mainly meant hoodwink the Court and to frustrate her quest for knowledge.

The Respondents Response

The respondents through the firm of G.O. Ombachi & Co. Advocates for the 2nd respondent opposed the application on the following grounds:-

- (i) That the suit offends the provisions of Section 11 and 12 Civil Procedure Act.
- (ii) That the subject matter herein is situated within the Geographical jurisdiction of Wanguru Law Courts.
- (iii) That the subject matter herein is within the pecuniary jurisdiction of Wanguru Law Courts.
- (iv) That a matter over the same subject matter has been heard and determined being Wanguru SRMCC No. 122 of 2009.
- (v) That there is a similar matter over the same subject matter pending before Wanguru Law Courts being SRMCC No. 19 of 2013.
- (vi) That the application is frivolous, scandalous and otherwise an abuse of the Court process.
- (vii) That the application ought to be dismissed with costs.

Legal Analysis

I have considered the application and the affidavit in support thereof. I have also considered the grounds of opposition filed to counter the said application. I have equally considered the applicable law.

Section 18 of the Civil Procedure states as follows:-

“(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 heard, or of its own motion without such notice, the High Court may at any stage:-

(a) Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) Withdraw any suit or other proceeding pending in any Court subordinate to it, and thereafter:-

(i) Try or dispose of the same; or

(ii) Transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) Re-transfer the same for trial or disposal to the Court from which it was withdrawn”.

The applicant in the affidavit in support of the application has deposed that her claim in CMCC No. 153 of 2019 (Kerugoya) is for a declaration and cancellation of title deed issued to the 2nd defendant and that the Magistrate Court has no jurisdiction to determine those issues. She annexed copies of the pleadings in the said case marked “EN 1”. It is trite law that jurisdiction is either donated by the Constitution or statute. **Section 13 of the Environment and Land Court Act, 2011** provides as follows:-

“(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes:-

(a) Relating to environment planning and protection climate issues, land use planning, title tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) relating to compulsory acquisition of land;

(c) relating to land administration and management;

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land; and

(e) any other dispute relating to environment and land.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution”.

The same statute also gives jurisdiction to Magistrate Courts to handle environment and land matters within their area of jurisdiction. **Sections 25 and 26 of the Act** provides as follows:-

“25. Section 26 of the Environment and Land Court Act is amended by inserting the following sub-sections immediately after sub-section (2) –

(3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.

(4) Subject to Article 169 (2) of the Constitution, the magistrate appointed under sub-section (3) shall have jurisdiction and power to handle:-

(a) Disputes relating to offences defined in any Act of Parliament dealing with environment and land; and

(b) Matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrate’s Court Act”.

Again Section 9 of the Magistrate’s Court Act No. 26 of 2015 provides:-

“9. Claims in Employment, labour relations claims; land and environment cases.

A Magistrate Court shall

(a) In the exercise of the jurisdiction conferred upon it by Section 26 of the Environment and Land Court Act (No. 19 of 2011) and subject to the pecuniary limits under Section 7(1), hear and determine claims relating to:-

(i) Environment planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(ii) Compulsory acquisition of land;

(iii) Land administration and management;

(iv) Public, private and community land and contracts, choses in actions or other instruments granting any enforceable interests in land; and

(v) Environment and land generally”.

Flowing from the statutory provisions and the Constitution, there is no specific provisions barring the Magistrate’s Court from hearing and determining declaratory suits which relate to title to land. The applicant has not supplied any decision from the High Court or Courts of equal status or even the superior Courts showing that Magistrate Court are not clothed with the requisite jurisdiction to handle the issues arising from the case currently pending before Court being CMCC No. 153 of 2019 (Kerugoya). I find no merit in the Notice of Motion dated 6th January 2020. Consequently, the same is hereby dismissed with costs to the 1st respondent. It is so ordered.

Ruling READ, DELIVERED physically and SIGNED in open Court at Kerugoya this 13th day of November, 2020.

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E.C. CHERONO

ELC JUDGE

In the presence of:-

1. Mr. Muriuki for the Applicant
2. 1st Respondent in person – present
3. 2nd Respondent/Advocate – absent
4. Mbogo, Court clerk – present