



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 552 OF 2017

(FORMERLY NRB ELC CASE NO. 1101 OF 2013)

AVID DEVELOPER LIMITED.....PLAINTIFF/RESPONDENT

VERSUS

BLUE HORIZON PROPERTIES LIMITED.....1ST DEFENDANT/APPLICANT

THE DIRECTOR OF SURVEYS KENYA.....2ND DEFENDANT/RESPONDENT

THE REGISTRAR OF TITLES ARDHI HOUSE NAIROBI.....3RD DEFENDANT/RESPONDENT

RULING

The matter for determination is the **Notice of Motion Application**, dated **30th July 2019**, by the 1st Defendant/ Applicant seeking for orders that;

- 1. This case be transferred to the Environment & Land Court sitting at Machakos for hearing and determination.**
- 2. The Applicant be granted the costs of this Application.**

The Application is premised on the ground that the instant suit seeks determination of ownership of land parcel **No. L.R No. 20150, I.R No. 120373**, at Municipal Council of **Mavoko**, that is in Mavoko Sub County, which is within the local limits of the **Environment & Land Court at Machakos**. That the suit property lies within the local limits of the **Environment & Land Court in Machakos** and as such ought to be instituted, heard and determined in the Court which is operational and functional.

It was contended that the Plaintiff/ Respondent has amended the Plaintiff and the 1st Defendant/ Applicant has also amended the Defence and that new parties have joined the suit and fresh prayers have been sought by the Plaintiff/ Respondent and the suit therefore cannot continue without a **de novo trial**. That according to **Section 12 of the Civil Procedure Act**, the Environment & Land Court in Machakos is within the local limits whose jurisdiction the suit property is situated and since the matter is yet to be set down for de novo hearing on its merits, thus no prejudice would be occasioned to any of the parties. Further that the **Machakos Environment & Land Court** is less busy, compared to the **Thika Environment & Land Court** and transferring the suit to **Machakos** would ensure expeditious determination of the suit. That it is only fair and just and in tandem with the overriding objective of the Civil Procedure Act that the Applicant be granted the orders sought.

The Application is opposed and the Plaintiff/ Respondent filed grounds of opposition dated **16th October 2019**, and filed on **17th October 2019**, and averred that the Application is an abuse of the court process. Further that the Application is **res judicata** as the **Machakos Environment Land Court Division** directed on **17th May 2017**, that the file be brought before the Presiding Judge in **Thika Environment & Land Court** for hearing and final determination. That the matter has been heard substantially with all three of the Plaintiffs witnesses having testified and the transfer of the suit at this stage would greatly prejudice the Plaintiff/Respondent, who has a constitutional right to have its case heard and determined expeditiously.

Further that the Application offends the spirit of the provisions set out under **Order 47 Rule 6** of the Civil Procedure Rules and the Constitution. That the principle matters to be taken into consideration being balance of convenience, expense. Interest of justice and possibilities of undue hardship tilt in favour of the suit being concluded in the current jurisdiction.

The Application was canvassed by way of written submission which the Court has carefully read and considered. The Court finds the issue

for determination is *whether the 1st Defendant/ Applicant is entitled to the orders sought.*

The Applicant has sought for the transfer of this suit from this **Thika Environment Land Court** to the **Machakos Environment & Land Court** based on the grounds that the suit property in issue is within the local limits of the **Machakos Environment & Land Court**. From the Applicant's Application, the only reason that has been advanced by the Applicant herein is that the suit property is within the local limits of the **Machakos Environment & Land Court**. Further, in its submission the Applicant has submitted that the said **Machakos Environment & Land Court** is better equipped as there are no backlog in the said Court and therefore the suit is likely to be determined expeditiously. The Applicant has also thwarted the Plaintiff's/Respondent's contention that there were various witnesses that had already testified and averred that since they had added parties to the suit, there was likelihood of the matter starting de novo.

It is not in doubt that the **Environment & Land Court** has an equal status as the High Court; Though it is a specialized Court, it enjoys all the rights and privileges of a High Court and therefore just like a High Court, the Environment and Land Court has jurisdiction all over the Country and there is no doubt that **Thika Environment & Land Court** has jurisdiction over a property that is situate in Mavoko County. See the case of **L N ...Vs... A N Alias N M [2014] eKLR** where the Court held that;

“Section 12(d) of the Civil Procedure Act, requiring a suit for the determination of any other right to or interest in immovable property should be instituted in the court within the local limits of whose jurisdiction the property is situate does not relate to the High Court as the High Court has jurisdiction all over the Republic of Kenya and hence properties in Kenya in respect of which the High Court is called up to determine the rights of parties are all within the jurisdiction of the High Court. But Section 15 of the Civil Procedure Act requires suits to be filed in the court nearest to where the defendant resides or where the cause of action arose.”

It is also not in doubt that the suit was first filed in **Nairobi, Milimani Environment and Land Court** where this Court sitting in Nairobi had taken the evidence of some witnesses. It is further not in doubt that the **Honourable Justice E. Obaga**, did transfer the suit to **Machakos Environment and Land Court**, where upon perusal of the file, the suit was further transferred to this Court by **Honourable Justice O. Angote**, wherein the Court noted that it would be in the interest of Justice for this Court to hear and determine the matter since it had taken the evidence of some witnesses.

It is further not in doubt that since the matter was transferred to this Court, some parties have since been added and the parties have amended their pleadings. It is the Applicant's contention that since that has happened, it is inevitable that the suit would automatically start de novo. However, it is not in doubt that the said directions on whether or not the suit would start de novo have not been taken. Facts have not been considered for the Court to make a finding on whether the suit would start de novo or not. Therefore, the Court finds that it cannot be authoritatively said that the suit would start de novo.

It is also not in doubt that after taking directions, the Court might as well order the suit to start de novo. However, it this Court's considered view that this cannot be the only reason that would necessitate the Court to transfer the suit back to **Machakos Environment & Land Court**. Further there is no evidence in the Court's considered view the **Machakos Environment & Land Court** would expedite this matter as opposed to the **Thika Environment & Land Court**. The Court has considered the fact that this matter was first filed in Nairobi, then to Machakos and to Thika and it will not be in the interest of Justice to further transfer it back to **Machakos Environment & Land Court**, wherein it will have to undergo the process of being transferred to that Court and further the Court in Machakos will then have to give directions before it can be heard. It is the Court's considered view that this Court has jurisdiction to deal with the suit herein and no plausible reasons have been given to warrant the Court transfer the suit to Machakos Environment & Land Court, while it has the requisite jurisdiction to deal with it. **See the case of L N ...Vs... A N Alias N M (supra)** where the Court held that;

“In considering whether to transmit a suit to another Judge in another station for hearing and determination, the factors to be considered include whether the suit was instituted in compliance with the requirements of the Civil Procedure Act; the balance of convenience; the expense on the part of the parties; the interest of justice and possibilities of undue hardship and generally whether the hearing where the suit is filed will prejudice the rights of the party seeking orders for it to be heard in another station.

In this case, after weighing one thing with another, and regard being had to the reasons advanced by the applicant and the retort by the respondent, it seems to me that although ideally the suit should have been filed in Embu station of this Court, and although the allegations by the respondent lack details the applicant has not refuted that he has threatened her life and that the matter is with the police. It is my finding that the applicant has not made out a strong case for the suit to be transmitted to Embu station and as the divorce cause is also in this station and the applicant is not inconvenienced by its being heard here in Nairobi, it seems logical that there is no reason why both cannot be heard and determined in Nairobi. For these reasons, I decline to grant the application which I dismiss with no order as to costs.”

The Upshot of the foregoing is that the **Notice of Motion Application** dated **30th July 2019**, is **not** merited and the same is dismissed entirely with costs to the Plaintiff/ Respondent.

The Court further notes that the Plaintiff/ Respondent submitted that the 1st Defendant/ Applicant has not paid their costs which were ordered. The 1st Defendant/ Applicant is further ordered to comply with the said orders of the court for costs and failure to do so, they will not have audience of the Court.

It is so ordered.

Dated, signed and Delivered at Thika this 12th day of November 2020

L. GACHERU

JUDGE

12/11/2020

Court Assistant - Lucy

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15th March 2020**, this **Ruling** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

With Consent of and virtual appearance via video conference – Microsoft Teams Platform

M/s Githii for the Plaintiff/Respondent

Mr. Mwangi J. M. for the 1st Defendant/Applicant

No appearance for 2nd & 3rd Defendants/Respondents

L. GACHERU

JUDGE

12/11/2020