



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 244 OF 2017

JOSEPH MAKAU MBONDO.....PLAINTIFF

VERSUS

PETER MAINGI MUMO1ST DEFENDANT

CHIEF LAND REGISTRAR2ND DEFENDANT

RULING

1. In the Notice of Motion dated 1st November, 2017, the Plaintiff is seeking for the following orders:

- a. That the Honourable Court do review and or set aside orders issued on 12th October, 2017.*
- b. That the Plaintiff's suit herein be dismissed for duplicity and for being a gross abuse of the court process.*
- c. That the costs of this suit and this Application be borne by the Plaintiff.*

2. The Application is based on the grounds that on 24th January, 2017, the 1st Defendant herein filed Mavoko ELC No. 1 of 2017 in respect of the suit land; that Summons to Enter Appearance were served on the Plaintiff on 25th January, 2017 and that this suit and ELC. No. 1 of 2017 are similar and refer to the same parcels of land, to wit, Mavoko Town Block 6/864 and plot number 70 Mavoko (*now Mavoko Town Block 6/911*).

3. It is the Defendants' deposition that this suit is a blatant abuse of the court process and offends the provision of Sections 6 and 7 of the Civil Procedure Act; that the Mavoko Law Courts have jurisdiction to deal with the suit land and that the Application should be allowed as prayed.

4. In reply, the Plaintiff deponed that he is the beneficial and legal owner of Plot Numbers 71 (*now registered as Mavoko Town Block 6/864*) and Plot Number 70 (*now Mavoko Town Block 6/911*); that the Defendants filed a suit at Mavoko Law Courts being ELC. No. 1 of 2017 and that the orders that he has prayed in this suit cannot be granted by the lower court.

5. The Plaintiff deponed that the jurisdiction of the lower court is limited and that the current suit raises triable issues and does not in any way intend to abuse or delay the court process as alleged by the Defendants.

6. Both the Plaintiff's and the Defendants' advocates filed their respective submissions. The Defendants'/Applicants' counsel submitted that the issue of the Magistrates having jurisdiction to handle land matters was determined by the Court of Appeal; that the Subordinate Courts now have jurisdiction to handle environment and land matters and that the Plaintiff should not have filed the current suit.

7. The Plaintiff's advocate submitted that the Title Deeds in respect of the suit land was issued under the provisions of the Land Registration Act; that the prayers sought in the current suit can only be granted by this court and not the lower court and that Section 26(1) (a) and (b) confers jurisdiction to this court to cancel a Title Deed.

8. The Plaintiff's counsel finally submitted that the value of the two suit properties is more than 50,000,000 and that the Applicants have not met the threshold of having the orders of the court reviewed.

9. It is not in dispute that before this suit was filed by the Plaintiff on 25th May, 2017, the 1st Defendant had sued the Plaintiff herein in Mavoko SPMCC ELC Case No. 1 of 2017 in respect to the same suit properties. According to the 1st Defendant, he filed the said suit in the lower court because the Court of Appeal had decreed that the Magistrate's Court can hear and determine Environment and Land matters.

10. Both the Plaintiff and the 1st Defendant are laying claim on parcels of land known as Mavoko Town Block 6/864 and 911. A Certificate of Lease of parcel number Mavoko Municipality Block 6/804 has since been issued in favour of the 1st Defendant.

11. It is true, as submitted by the Defendants' advocate, that vide the Magistrate's Courts Act (*Act No. 26 of 2015*) which came into force in the year 2016, the Magistrates were granted the jurisdiction to hear claims relating to land and environment (*See Section 9*). The said jurisdiction extends to claims relating to title, meaning that the lawfulness or otherwise of a Title Deed can be determined by the Magistrates who have been gazetted pursuant to the provisions of Section 26(3) of the Environment and Land Court Act, with the only limitation being the Magistrate's pecuniary jurisdiction. Indeed, the provisions of the law empowering Magistrates to hear and determine land and environment matters were declared constitutional by the Court of Appeal in the case of *The Law Society of Kenya, Nairobi Branch vs. Malindi Law Society & Others, Nairobi Civil Appeal No. 287 of 2016*.

12. Consequently, the 1st Defendant was entitled to file Mavoko SPMCC No. 1 of 2017. However, the lower court can only hear the said suit if the value of the two properties falls within the pecuniary jurisdiction of the Senior Principal Magistrate. Considering that it is not clear to this court what the value of the two suit properties is, I shall not strike out this suit for being *sub judice* Mavoko ELC. No. 1 of 2017. Indeed, if it turns out that the value of the suit land exceeds the jurisdiction of the lower court, then the two matters will be consolidated and be heard by this court. Either way, and in view of the uncertainty about the value of the suit properties, I find and hold that the two matters should be consolidated.

13. For those reasons, I dismiss the Application dated 1st November, 2017 but with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 25TH DAY OF JANUARY, 2019.

O.A. ANGOTE

JUDGE