



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA AT MIGORI

ELC MISC. CASE NO. 5 OF 2019

ROSEMARY ATIENO MBOGO.....PLAINTIFF

VERSUS

1. ROSE ATIENO JUMA

2. CHARLES ORWA OYOMBE

3. JOHN OKUKU OYOMBE

4. MARTIN ADERA OYOMBE

5. STEPHEN OCHIENG.....DEFENDANTS

(Being a review of orders made by Honourable Arome Resident Magistrate in Ndihiwa SRMCC NO. 397 of 2017 on 30/8/2018).

RULING

1. The suit namely Ndihiwa Senior Resident Magistrate's Civil Case No. **397 of 2016** has been drawn to my attention by Hon. M.A. Ochieng (Mrs), Senior Resident Magistrate Ndihiwa for consideration for review of orders made therein on 30th August, 2018 by Hon. Arome(Resident Magistrate).
2. The original file together with a certified copy of proceedings in that suit were availed to this court on 11th March 2019. I have carefully perused the entire record. I note that the plaintiff originated the suit by way of a plaint (**Fast Track**) dated 30th October 2017 filed on 31st October 2017 and amended on 16th April,2018 seeking eviction orders and costs of the suit against the defendant's jointly and severally in respect of the suit land, **LR NO. KABUOCH/KOBITA/KAWUOR/2332**, measuring approximately **2.70** hectares.
3. The relief of eviction sought as per the plaint in that suit is governed by **Section 152 (A) to 152 (1) of the Land Act, 2016 (2012)**. Subordinate courts as empowered by any written law shall have jurisdiction to hear and determine Environment and Land matters including eviction further to **Section 150 of the said Act (2016)**.
4. Be that as it may, **Section 26 (3) and (4) of the Environment and Land Court Act, 2015, (2012)** (the ELC Act) makes provision for designated Magistrates to deal with Environment and Land disputes. Appeals from the designated magistrate's court's lie with the Environment and Land Court (the ELC).
5. It is discernable from the record of the trial court that on 30th August, 2018, a request for Judgment for the plaintiff against the defendants who had entered appearance but failed to file defence was filed by the firm of Owade and Company Advocates for the plaintiff. The request for judgment was endorsed accordingly by Honourable Arome (Resident Magistrate).
6. The plaintiff's claim in respect of the suit land is not a liquidated demand as provided for under **Order 10 Rules 4, 5,6 and 7 of the Civil Procedure Rules, 2010**. In the circumstances, the order made on 30th August 2018 by the Honourable Magistrate was superfluous.
7. More fundamentally, Honourable Arome (Resident Magistrate) who endorsed the orders as a Judgment on 30th August,2018, was not a designated Magistrate as envisaged **under Section 26 (3) and (4) of the ELC Act, section 9 (a) of the Magistrates' courts Act, 2015** as read **with Section 15 of the Land Act,2016 (2012)**. Thus the said learned magistrate was want of jurisdiction over the suit as recognised by Lenaola J (as he then was) in **Daniel Kaloki Kioko and another –v- Willy Muasya Kioko (2009) eKLR (2009)**, see also the **Owners of Motor Vessel Lilian "S" –V- Caltex Oil Kenya Ltd (1989) KLR 1**.

8. This court is bound by the procedure laid down by the **Civil Procedure Act (Cap 21 Laws of Kenya)** as stipulated under **Section 19 (2) of the ELC Act**. I am also alive to the overriding objective under **Section 3 of the ELC Act** applicable in this matter.

9. It has been observed that land is an extremely important aspect of lives of ordinary people and land cases must be heard as quickly as possible by any forum provided by law or as agreed by the parties; see the case of **Mwangi and another –vs - Mwangi (1986) KLR 328 and Article 159 (b) of the Constitution of Kenya,2010**.

10. Wherefore and Pursuant to **Sections 3 (1) of the ELC Act** and **sections 1,1A, 3,3A of the Civil Procedure Act (Cap 21)**, I direct and order as follows :-

- a) The orders made on 30th August 2018 by Honourable Arome (Resident Magistrate) in Ndhiwa Senior Resident Magistrate’s Court Civil case No. 397 of 2017 be and are hereby set aside.**
- b) The suit referred to in order (a) herein above be heard and determined without delay by a designated magistrate at Ndhiwa Principal Magistrate’s Court.**
- c) The original file of the suit namely Ndhiwa Senior Resident Magistrate’s court Civil case No. 397 of 2017 be returned to Ndhiwa Law Courts with due dispatch.**

Orders accordingly.

DELIVERED, DATED and SIGNED AT MIGORI THIS 19TH DAY OF MARCH 2019.

G.M. A. ONG’ONDO

JUDGE

In the presence of

Tom Maurice – Court Assistant