



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

MISC APPL. NO. 3 OF 2019

DENNIS KOIKAI NAISHO.....PLAINTIFF/RESPONDENT

-VERSUS-

ERIC TIPIS.....1ST DEFENDANT/APPLICANT

SARAH TIPIS.....2ND DEFENDANT/APPLICANT

MICHAEL TIPIS.....3RD DEFENDANT/APPLICANT

BENARD TIPIS.....4TH DEFENDANT/APPLICANT

RULING

The Defendants/Applicants filed an Application dated 7th March, 2019 and brought under order 45 (1) of the Civil Procedure Rules and sought for review of an order issued by the court on 27th July, 2018 transferring the suit herein to the Magistrate's court and that the court do proceed to determine the defendants Notice of Preliminary Objection dated 7th February, 2018.

The Application was based on the ground that the court did not determine the preliminary objection dated 7th February, 2018 challenging the validity of the Plaintiff's suit herein which suit cannot be heard by the Magistrate's court for want of jurisdiction and further that because of the aforesaid errors on the face of the record will justify the grant of the orders sought.

The Application was supported by the Affidavit of one Eric Tipis who is the 1st Defendant who deponed on the grounds upon which the Application was based. In his supporting affidavit the Applicant avers that the suit herein cannot be heard by the Magistrate's court for want of pecuniary jurisdiction and that the existence of a preliminary objection which is yet to be determined further curtails the power of the Magistrate's Court to hear and determine the suit.

The Applicant in support of the above referred to a valuation report that was filed in court on 27th February, 2019 which placed the value of the land at Kshs. 86,000,000 and for the above reasons he avers that it shall serve the interest of justice to have the court review the ruling made on 27th February, 2018.

The Application was opposed by the respondent by way of a replying affidavit in which he avers that the application is devoid of merit and be dismissed as the applicants failed to challenge the ruling dated 27th July, 2018 and further the Applicants have defied the orders of the court and went ahead to subdivide the suit land.

The respondent further faults the Application as means of delaying the hearing and determination of the suit and lastly that the Applicants have not met the threshold for grant of orders sought.

When the matter came up for hearing counsel for the applicant invited the court to look at the pleadings as filed and on which he will rely on entirely. The Respondent also sought for and was granted time to file his submissions which at the time of writing this ruling they have not filed and in the circumstance I proceed to write the ruling filing of their submissions notwithstanding.

I have read the application before me and the pleadings. The Application before me is one that seeks the court to review and set aside its ruling dated 27th July, 2018. A court has discretion to review its orders and a party seeking such a review must demonstrate that there was an error apparent on the face of the record or on account of some mistake and the application was brought without undue delay.

In the instant application the applicant contend that his suit was transferred for hearing and determination before the Magistrate's court which lacks the pecuniary jurisdiction and as a result of which his case is in limbo as the ELC court transferred it to a court that lacks the

jurisdiction. From the pleading the applicant has annexed a copy of a valuation report which values the property at kshs. 86 million. This valuation and the contentions on the lack of jurisdiction has not been controverted and/or challenged by the respondents and I find that there was an error in transferring the suit herein to the magistrate's court in the ruling delivered on 27th July, 2018 and for the above reasons I set aside the order of transferring the suit.

On whether following the grant of order of review and setting aside the court should transfer the matter to Nakuru Elc for hearing and determination I find no merit as no reasons were adduced to warrant the aforesaid transfer.

The upshot of the above is that the ruling delivered by the court on 27th July, 2018 is hereby set aside and that the suit herein shall proceed before Narok ELC for hearing and determination.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **8TH** day of **APRIL, 2019.**

Mohamed N. Kullow

Judge

8/4/19

In the presence of:

Mr Njagi for the Defendant/applicant

Mr Langat holding brief for Masikonde for the Plaintiff/Respondent

Mr Chuma

Mohamed N. Kullow

Judge

8/4/19