



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

ELC NO. 59 OF 2019

KIANJOYA ENTERPRISES LIMITED.....PLAINTIFF

VERSUS

SAMUEL MACHARIA KIMANI & 4 OTHERS.....DEFENDANT

RULING

(Application seeking orders inter alia to transfer two suits pending before the Magistrate's Court to the Environment and Land Court for determination; applicant having filed a separate suit before the ELC; suits before the Magistrate's Court being over the same subject matter and bringing forth similar issues of law and fact; prayer for transfer of the two cases in the Magistrate's Court to the ELC allowed)

1. This suit was commenced through a plaint which was filed on 19 June 2019. In the suit, the plaintiff has averred that it is the legitimate owner of the land parcels described as LR Nos. 4630/7,8,9 and 8851/2 which parcels were converted into the regime of the Registered Land Act (now repealed) under various block numbers including the block Miti Mingi/Mbaruk Block 8. The plaintiff has averred that it caused the said Miti Mingi/Mbaruk Block 8 to be subdivided into several portions, including the land parcels Miti Mingi/Mbaruk Block 8/1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412 and 1413 (Kianjoya D). In the month of December 2018, the plaintiff avers that it discovered that the 1st, 2nd, 3rd and 4th defendants have encroached into the said properties, and on conducting official searches, it found that the 1st to 4th defendants with the alleged facilitation of the 5th defendant have fraudulently and illegally obtained title to the said properties. It was claimed that the said 1st – 4th defendants have attempted to fence and further subdivide the suit properties. In the suit, the plaintiff wishes to have a declaration of ownership of the suit properties and cancellation of the titles of the 1st – 4th defendants.

2. Together with the suit, the plaintiff filed an application seeking orders of injunction to restrain the defendants from dealing with the suit properties. In addition, the plaintiff also sought orders to have stayed the proceedings in the cases Nakuru Chief Magistrate's Court ELC No. 17 and 18 of 2019, and further sought orders that the two suits be forwarded to this court and be consolidated with this present suit.

3. When the application first came before me *ex-parte*, I granted interim orders stopping any dealings in respect of the suit properties and also directed that the two files in the subordinate court be availed to court. I gave the date of 2 July 2019 for *inter partes* hearing. On this date, Mr. Munyua, learned counsel for the 1st to 3rd defendants contested the prayer for transfer of the cases in the lower court and I directed that we first dispense with this prayer.

4. Ms. Mugweru submitted that this court has jurisdiction to hear the dispute herein pursuant to its constitutional mandate. She further submitted that no substantive issue has been handled in the lower court case. Mr. Munyua in objecting to the transfer of the two suits, submitted inter alia that if the position is that the matters are filed in a court with no jurisdiction, then there is nothing to transfer, and if the matters are in a court with jurisdiction, then there would be no basis to transfer them. Mr. Weche, counsel appearing for the 5th defendant, submitted that in the lower court, preliminary objections were raised as to the jurisdiction of the courts and that these objections are pending ruling. He submitted that transfer can only be made if the matters were in a court with jurisdiction and he referred me to the case of ***Phoenix E.A vs S. M. Thiga T/A Newspaper Service (2019) eKLR***.

5. I have called for and perused the two files sought to be transferred to this court. The plaintiff in the case Nakuru CM ELC No. 17 of 2009 is Samuel Macharia Kimani and the defendant is the Land Registrar, Naivasha. The said Samuel Macharia Kimani has been sued as the 1st defendant in the case before this court. In his plaint, before the Magistrate's Court, he averred that he is the registered proprietor of the land parcels Miti Mingi/Mbaruk Kianjoya D Block 8/1400, 1401, 1402, 1403, 1404, and 1405, situated within Naivasha Sub-County in Nakuru County. He claimed that the Land Registrar, Naivasha, had declined to issue him with official searches to the said properties, and in his suit, he sought orders for the Land Registrar to expunge entries made in the green card of the properties he claims to belong to him and a permanent injunction to stop the Land Registrar from adversely affecting the register. The plaintiff in the suit Nakuru CM ELC No. 18 of 2019, is John Nganga Githii (the 3rd defendant in the case before this court) and the defendant is the Land Registrar, Naivasha. He has contended to be the registered owner of the land parcels Miti Mingi/ Mbaruk Block 8/1408, 1409, 1410, 1411, and 1412. His cause of action is similar to the plaintiff's in the case Nakuru CM ELC No. 17 of 2019. Both the suits were filed on 28 January 2019. Through an application dated 19 March 2019, the plaintiff in the suit before this court filed an application to be enjoined as interested party. There was also filed a

preliminary objection that the Magistrate's Court in Nakuru has no jurisdiction, for the parcels of land are situated in Naivasha, where there is a competent court, and that the value of the subject matter exceeds the pecuniary jurisdiction of the court. A valuation report was filed which indicates that the total value of the properties is Kshs. 66,000,000/=. A similar objection was filed by the State Law Office who act for the Land Registrar, Naivasha. The trial Magistrate directed counsel to file written submissions on the preliminary objection and reserved ruling for 7 August 2019.

6. In the suits before the Magistrate's Court, the two plaintiffs, who have been sued in this case as the 1st and 3rd defendants, claim ownership of the same properties that are the subject matter in this case. They have however only sued the Land Registrar for failing to avail to them documents relating to the registers. In this case, the plaintiff seeks title to the same properties and has introduced two additional defendants who are not in the cases before the Magistrate's Court. I have no doubt that this suit and the two suits in the Magistrate's Court bring forth similar issues of law and fact and are best heard together. If they are not heard together, there is a risk that there may be a conflict of decision. There is no question that this court has the requisite jurisdiction to handle both the suit herein and the two suits in the Magistrate's Court, but there is contention that the Magistrate's Court has no jurisdiction in the matter given the value of the subject matter. I am aware that this issue of jurisdiction is pending ruling. However, in my view, it is pointless to wait for the ruling, because I am persuaded that for the proper administration of justice, it is necessary to have the suits in the Magistrates' Court and this suit consolidated to avoid a conflict of decisions. In my view, it is best that the two suits in the Magistrate's Court be transferred to this court for consolidation with this suit and for a full determination on who is entitled to ownership of the properties in dispute.

7. I am opting to transfer the files to this court, not because the Magistrate's court has no jurisdiction, and in fact I have not made any decision on whether or not the Magistrate's court had jurisdiction in the first place or not, but because I feel strongly that it is necessary to have the files heard together to avoid a conflict of decisions and for the proper administration of justice. The course of justice will not be helped in any way by awaiting a ruling on whether or not the Magistrate's Court has jurisdiction. With the order of transfer of the matters to this court, it is moot for the Magistrate to make a ruling on whether or not he/she has jurisdiction, and it is thus not necessary to do so, and indeed, following the order of transfer, the Magistrate needs to down his/her tools in the two matter forthwith.

8. I therefore allow prayer 3 of the application and do transfer the suits Nakuru CM ELC No. 17 and 18 to the Environment and Land Court for disposal alongside this suit.

9. In respect of the proceedings relating to this aspect of the application, I make no orders as to costs.

10. Orders accordingly.

Dated, signed and delivered in open court at Nakuru 31ST day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Mrs. Gathecha holding brief for Ms. Mugweru for the plaintiff.

Mr. Munyua for the 1st – 3rd defendants.

No appearance for the 4th defendant.

Mr. Weche for the 5th defendant.

Court Assistants- Nelima Janepher/Patrick Kemboi.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU