



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC CASE NO. 62 OF 2015

JOHN KIPKEU KIROP.....1ST PLAINTIFF

BENJAMIN KANDA YANO.....2ND PLAINTIFF

OSCAR KIBET MAGEN.....3RD PLAINTIFF

SHADRACK KIPYATICH KIBOR.....4TH PLAINTIFF

VERSUS

MIKE KIPKEMOI KIROP.....DEFENDANT

RULING

1. This is one of the earliest matters that came before me on 2/2/2017 in this station. It has not been concluded yet.

2. Two years after that date the defendant has now filed the application dated **18/3/2019** pursuant to the provisions of **Section 3A and 18** of the **Civil Procedure Act** seeking to have this suit transferred from this court to the Principal Magistrate's Court Iten for hearing and determination. The grounds for the application are that the subject matter of the suit is within the pecuniary and geographical jurisdiction of the Principal Magistrate's Court Iten and that the transfer would expedite the hearing and determination of the suit. It is averred that the value involved is **Kshs. 2,000,000/=** which is within the pecuniary jurisdiction of the Principal Magistrate Iten.

3. The application is opposed. The plaintiffs filed what they called the "*Reply to Applications*" which I must consider, however unprocedural it is for the reasons that, firstly, the plaintiffs are acting in person and secondly, transfer is a mere procedural issue which this court can determine in the absence of an application by any of the parties. The replying affidavit of the 2nd plaintiff was filed on 23/4/2019. Their submissions were filed on 13/5/19.

4. Though I am aware that this court has unlimited original jurisdiction as urged by the plaintiffs, I am of the view that for good order any matter within the pecuniary and geographical jurisdiction of the court at Iten should be filed in the Magistrate's Court at Iten. However, I must consider reasons why the plaintiffs may want the suit heard at Kitale, and make the appropriate orders.

5. The plaintiff's first ground is that the matter is part heard before this court. The record contradicts them on that issue, for on 24/10/2016 **PW1** testified and the case proceeded in the absence of the defendant. Ex-parte judgment was delivered on **2/11/2016**. That judgment was set aside at the instance of the defendant on **18/7/2018**. The suit has been pending a fresh hearing since then. I do not find the ground that this suit has proceeded before this court to be persuasive because those proceedings were set aside and it is now as if it has never proceeded. In any case no hearing would be disrupted by any transfer order.

6. The second ground is that all the plaintiff's witnesses are elderly and reside in Trans Nzoia County, and a transfer will occasion them financial and psychological torture. I have examined the plaintiff's list of documents and found only two witnesses listed therein. I am also aware that the plaintiffs had restricted themselves to only one witness in the proceedings that were set aside in this case and I do not expect an exponential increase in the number of witnesses at the future hearing. The issue of age, extraordinary expense and psychological torture has not been elaborated on. I must however strike a balance in the orders I give. Perchance the allegation that there will be elderly witnesses in the hearing of this matter in future turns out to be genuine, they may not need to travel far. This suit had been pending at this station since 2015 without any demur on the part of the defendant prior to the filing of his application dated 18/3/2019. That ground too has not been proved.

7. The third ground is that the defendant delayed in having the application made to transfer this matter to Iten and the court had already decided the matter. Citing **Article 165 3(a)** of the **Constitution of Kenya**, the plaintiffs aver that this court has unlimited original geographical and pecuniary jurisdiction and that it has no jurisdiction to transfer matters which have been decided to a lower court as it is an irregularity and a breach of the law. However I have already declared as above that since the setting aside of the earlier proceedings and

judgment this matter is now considered as a fresh matter and the fact that it had earlier proceeded can not bar a transfer.

8. The next ground is that the value of **Kshs. 2,000,000/=** is a “cooked” figure as the applicant has not produced a valuation report to establish that the suit land is worth only that much. However I take it to be a generally recognized fact that land away from main towns and cities in Kenya is relatively cheaper than urban land. I would not like to place an arbitrary value on the property. However in the absence of a Valuation Report this court is entitled to make a reasonable estimate of the value of property.

9. I consider all the other concerns that the plaintiffs have raised in their reply to be capable of being dealt with by the court as the case proceeds.

10. In conclusion I find that although some of the grounds the plaintiffs have raised are quite sensational and persuasive as to why this court should deal with this matter, I find no sufficient reason that would bar the granting of the orders sought in the application dated **18/3/2019**.

11. The Magistrates’ Court at Kitale also has jurisdiction to handle a matter of the stated pecuniary value. I therefore order that this matter be transferred to the Chief Magistrate’s Court at Kitale for hearing and final determination. The Deputy Registrar shall with notice to the parties place this file record before the Chief Magistrate for his directions as to hearing within 14 days.

It is so ordered.

Dated, signed and delivered at Kitale on this 18th day of July, 2019.

MWANGI NJOROGE

JUDGE

18/7/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

John Kipkeu 1st plaintiff present

N/A for 2nd, 3rd and 4th plaintiffs
N/A for the defendant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

18/7/2019