



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC MISC. CIVIL APPL. NO. 20 OF 2019

KEVIN KIVIASI KEZENGWE.....PLAINTIFF

VERSUS

MUNGAI WACHIRA.....DEFENDANT

RULING

1. The applicant filed a motion dated **13/8/2019** seeking that the **Originating Summons No. 15 of 2018** be transferred from the Principal Magistrate's Court at Kapenguria to the Environment and Land Court at Kitale for hearing and final determination.

2. The grounds upon which that application is brought are that the subject matter of this suit was filed before the Principal Magistrate's Court at Kapenguria vide **O.S. 15 of 2018** who has no jurisdiction to hear and determine this matter; that the transfer would expedite the hearing and determination of this suit as this court has wide discretion to grant the orders being sought by the plaintiff and that it is in the interests of justice that this suit be heard in the Environment and Land Court at Kitale.

3. The application is supported by an affidavit by the counsel for the plaintiff dated **13/8/2019**.

4. The application is not opposed. It is trite that for a court to order the transfer of a matter from one court to another the original court in which the matter was filed ought to have had jurisdiction.

5. However I have considered that proceedings for adverse possession must commence in a court possessed of proper jurisdiction and in accordance with **Order 37 Rule 7** of the Civil Procedure Act the provisions of that Order are as follows:

“1. An application under Section 38 of the Limitation of Actions Act shall be made by the original summons.”

6. **Section 38** of the Limitation of Actions Act provides as follows:

“1. Where a person claims to have become entitled by advance possession to land registered under any of the Acts cited in Section 37 or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

7. **Section 37** of the Limitations of Actions Act cites the Government Lands Act, the Registration of Titles Act, the Land Titles Act and the Registered Land Act.

8. I have examined the Originating Summons attached to the application and concluded that the land subject matter of the application was registered under the Registered Land Act **Cap 300** in **1984**. It is clear from the foregoing that the Magistrates Court at Kapenguria was not possessed of jurisdiction to handle the matter from the beginning and the Originating Summons should not have been filed in a Magistrates Court in the first place.

9. It is trite that for a court to order the transfer of a matter from one court to another the original court in which the matter was filed ought to have had jurisdiction. As the original court in which the Originating Summons was initially filed did not have jurisdiction, I find that the notice of motion dated **13/8/2019** is incompetent and it is hereby dismissed with costs.

Dated, signed and delivered at Kitale on this 28th day of October, 2019.

MWANGI NJOROGE

JUDGE

28/10/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Nyakundi holding brief for Katina for applicant

N/A for respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

28/10/2019