



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

MISC APPLICATION NO. 45 OF 2019

KENYA COUNTY GOVERNMENTS WORKERS UNION

(FORMERLY KENYA LOCAL GOVERNMENTS WORKERS UNION) MERU BRANCH THROUGH

JOSEPH KITHELA - CHAIRMAN

SAMUEL KAMUNDI – SECRETARY

LAWRENCE MANYARA – OFFICIAL

ASENATH KAIMURI NYAMU.....PLAINTIFFS

VERSUS

MORRIS MUTETHIA.....1ST DEFENDANT

DOUGLAS KAIMENYI.....2ND DEFENDANT

RULING

1. The application dated 19.8.2019 is brought under Article 10 (2) (b), Article 159 of the constitution, section 1A, 1B, 3, 3A and section 18 of the **Civil procedure Act laws of Kenya**. The applicants seeks orders that this court be pleased to stay proceedings in **Meru CMCC No. 119 of 2014** pending the hearing and disposal of this application inter-parties, that the court be pleased to withdraw and transfer the lower court file to the Environment and Land Court at Meru for reason that the property now exceeds the jurisdiction of the Magistrate's court and that costs of this application be provided for.

2. The grounds in support of the application are that the matter was filed in the year 2014 before the Chief Magistrate's court at Meru where the case substantially proceeded. The applicants realized that the suit land is worth sh. 22 000 000 after they requested for a valuation report. Applicants aver that what is pending is the filing of submissions and delivery of the judgment. However, if any judgment shall be delivered by the said court, the same shall be null and void abinitio for lack of jurisdiction and that the entire proceedings shall be a nullity.

3. Applicants have also filed a supporting affidavit where they have reiterated the grounds in support of the application.

4. The application has been opposed vide the grounds of opposition dated 16.9.2019 where it is stated that; the court has no jurisdiction to transfer a matter from a court that originally lacked jurisdiction, that the matter has already been heard and concluded and the same is coming for judgment on 19/11/2019. It is also stated that the valuation report has been unilaterally done by the applicants and hence the veracity of the same is in doubt.

5. The respondents have also relied on the replying affidavit of Samson Thurania who avers that he is the legal representative of the 2nd respondent. They contend that the value of the suit land is Kshs.9,000,000 as per the report of their valuer and that the lower court has jurisdiction to entertain the said matter. The respondents further state that the suit had been heard and finalized by Hon. Maroro, where by the file was transferred to Hon. Maroro for writing of judgment and that the application is meant to procrastinate the suit. The respondents pray for the dismissal of the application with costs.

6. The application came before me for the very first time on 19.9.2019 when it emerged that the lower court matter had a date for judgment. Vide a ruling dated 2.10.2019, this court declined to grant a stay of proceedings in the lower court on interim basis.

7. The application was argued orally on 7.11.2019. It was argued for the applicants that the matter was filed before the lower court when that court had jurisdiction to hear the matter. However, the value of the property increased with time, which is a natural occurrence. It was further argued that looking at the two reports the plot numbers are different hence the properties may not be the same. Ms. Kiome for the applicant urged the court to look at the report availed by the applicant and see that the value of the suit land exceeds Ksh. 20 million.

8. Mr. Muriuki for respondent contended that the valuation reports are in respect of the same property and that it is only numbers which are different. He further argued that there is nothing to be transferred as the suit has been heard and is pending judgment and that there is nothing to transfer when a suit is filed in a court without jurisdiction. In support of these arguments, the following authorities were proffered:

- **Kericho ELC 15/2017 Daniel Kipkemoi Siele vs Kapsasian Primary School**
- **Milimani High Court Misc Civil Suit No. 136 of 2012 Abraham Mwangi Wamigwi vs Simon Mbiriri Wanjiku & Another.**

9. I have duly considered all the arguments raised herein as well as the submissions advanced by the parties in addition to the cited authorities. It is not disputed that the case before the lower court is due for judgment before Honourable Maroro on **19.11.2019**.

10. The basis of this application is that the lower court no longer has jurisdiction to determine the matter on account of the value of the land. The applicant's valuation report indicates that the land is worth Shs.22,000,000 as at 23.7.2019. The respondents report indicates that the value of the land is Kshs.9,000,000.

11. The first issue to consider is whether this court can transfer a suit from a court without jurisdiction. Citing the case of **Daniel KipKemoi Siele vs Kapsasian Primary School ELC Misc. application no. 15 of 2017**, it is argued for the respondent that if the matter was filed in a court without jurisdiction, then such a suit is a nullity. However, the applicants have countered this argument, contending that when the suit was filed before the magistrate's court, that court had jurisdiction. It is common ground that land value in Kenya is not constant and it can drastically change and rise due to various factors, some even unrelated to the land itself. For instance, when owners of land get wind that a road nearby is being upgraded to bitumen standards, the value of such properties escalate rapidly. This far, I am in agreement with the proposition advanced by the applicant that the increase in value of the land can cause a court to lose jurisdiction, where such a court had jurisdiction when case was filed.

12. However, there is a disturbing issue, that this is a matter which is pending judgment which prompts me to pose two questions;

1. When did the applicants realize that the value of the land is beyond the jurisdiction of the lower court?
2. After this discovery did the applicants bring to the attention of the lower court that it no longer had jurisdiction to determine the matter?

13. On the first question, it was incumbent upon the applicants to state the tentative period when they discovered that the land was worth over 20 million. The respondents have submitted, and rightly so that the applicants submitted themselves to the jurisdiction of the magistrate's court and gave evidence. The court even gave a date of Judgement. It is therefore not enough for the applicants to simply state that the discovery occurred during the prosecution of the lower court case.

14. On the second question, as to whether applicants applied to the court to have the issue of jurisdictions addressed, again the applicants are mute. It is only the respondents who shed some light on 9.9.2019, when they informed this court that the applicants had applied for a stay before the lower court which application was dismissed.

15. In the case of **Bosire Ogera vs Royal Media Media Services HCC No. 292/2013 Nairobi**, the court made reference to the Court of Appeal decision in **Owners and Masters of Motor Vessel "Joey" Vs. Owners and Masters of the Motor Tugs "Barbara" and "Steve B" (2008)1EA 367**, where echoing the decision in the case of **Owners of Motor Vessel "Lillian S"**, the Court of Appeal held inter alia;

"The question of jurisdiction is threshold issue and must be determined by a judge at the threshold stage (emphasize added), using such evidence as may be placed before him by the parties. It is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it (emphasize added). Jurisdiction is everything and without it, a court has no power to make one more step....."

16. It is clear that the court seized of the matter is the one which is supposed to down its tools in respect of a matter before it the moment it holds the opinion that it has no jurisdiction – see **owners of motor vessel "Lillian S' vs Caltex oil K. Ltd (1989) KLR 1**. Such a court can only down its tools if the matter of jurisdiction has been brought to the court's attention. It is only thereafter that the issue can be litigated upon through the hierarchical systems of the court.

17. There is no evidence to indicate that the issue of jurisdiction was canvassed before the magistrate's court. That being the case, I then find that the application dated 19.8.2019 is unmeritorious. The same is hereby dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 18TH DAY OF NOVEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

M/s Ndegwa holding brief for M/s Kiome for applicants

Muriuki for respondents

2nd respondent (Samson)

HON. LUCY. N. MBUGUA

ELC JUDGE