



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC CASE NO 18 OF 2017

SAMUEL CHEGE NJUGUNAAPPLICANT

VERSUS

ISAAC MWANGI KARIUKI1st RESPONDENT

KARIUKI WANGURU.....2nd RESPONDENT

RULING

1. By a Notice of Motion dated 5th March 2014 and filed on the 7th March 2014 pursuant to Order 51 of the Civil Procedure Rules, 2010 and Section 1A, 1B, 3A and 18(1)(2) of the Civil Procedure Act, the Plaintiff/Applicant seeks for orders that:-

i. This Honorable Court be pleased to transfer Nakuru CMCC No. 51 of 2013 to this Land Court for hearing and disposal of the same.

ii. Costs of the Application be in cause.

2. The said application was supported by the grounds on the face of the application and the Affidavit, sworn by Francis Mwangi Njuguna, Counsel for the plaintiff/Applicant herein.

3. When the matter came before me on the 16th October 2017 for hearing, the Respondent's Counsel informed the court that the same was not opposed and further submitted that the court do proceed to deliver its ruling on the said application.

4. I have perused through the said application as well as the supporting affidavit thereto. What the applicant seeks is for the transfer of a matter that was filed in the Nakuru Chief Magistrate Court in CMCC No. 51 of 2013, from the said court to the Land and Environment Court.

5. The reason for the application being that this matter involves a dispute relating to land ownership between the parties hereto and further that the suit land herein falls within the jurisdiction of the Land court.

6. I have seen the plaint filed on the 21st January 2013 in which the Plaintiff/Applicant pleaded that he was the registered owner of the land known as Plot No. F. Jua Kali situated within Ol Kalaou Township having bought the same from the 2nd Defendant for Ksh 44,000/= vide an agreement dated 2nd March 1989. That after full payment and when he went to pay for the rates for the plot, he was informed that the 2nd Defendant/Respondent had sold the same to the 1st Defendant/Respondent who then attempted to evict the Applicant/Plaintiff herein from the said plot.

7. The Respondents have not opposed the application.

8. I have considered the application herewith as well as the reasons given while seeking to have the Nakuru CMCCC No. 51 of 2013 transferred to this court. His reason being that the matter in the subordinate court involves a dispute relating to land ownership between the parties hereto which land falls within the jurisdiction of the Land court.

9. Article 159 (2) (a) (b) (c) and (d) of the Constitution underscores the role of the court in the administration of justice. Article 159 (2) (d) provides that justice shall be administered without undue regard to procedural technicalities.

10. These Constitution provisions, mirrored against sections 1A and 1B of the Civil Procedure Act, clearly enjoin the courts to endeavor to do substantive justice to the parties without necessarily being shackled by procedural technicalities.

11. In the case of **Law Society of Kenya Nairobi Branch vs. Malindi Law Society & 6 others [2017] eKLR**, the court of Appeal held that:

Devolution, access to services and access to justice, among others, are critical pillars of our constitutional architecture. Article 6(3) of the Constitution demands reasonable access to services. Article 48 demands that the state “shall ensure access to justice for all persons.” Access to justice has many facets. One facet is the geographical location of the courts and proximity of the courts to the people intended to be served by the courts. There are undoubtedly more magistrate’s courts in Kenya than there are specialized courts or even High Court stations for that matter. The close proximity of magistrate’s courts to the people ensures efficiency and access to justice at reasonable cost. It would be illogical and unreasonable to prohibit magistrate’s courts from determining land and employment disputes, when it is undeniable that their reach to the citizenry is much wider than that of the specialized courts. Public interest, in our view, would be better served by increasing the number of courts with the capability of resolving such disputes.

12. I find that since the Magistrates courts have jurisdiction over the matters relating to the environment, use and occupation of, as well as title to, subject to the prescribed pecuniary limits, and further that since the subject matter in the Nakuru Chief Magistrate’s Court involves a dispute relating to land ownership between the parties hereto, and which land falls within the jurisdiction of this court, and in order to ensure efficiency and access to justice at reasonable cost, it is herein ordered the Nakuru CMCC No. 51 of 2013, be transferred to the Nyahururu Chief Magistrates’ Court for hearing and determination of the same.

13. Each party to bear its cost.

Dated and delivered at Nyahururu this 31st day of January 2018.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE