



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT MIGORI**

**ELC CASE NO. 312 OF 2017**

**(Formerly ELC Kisii case No. 336 of 2014)**

**STEPHEN OKETCH ORACHA.....PLAINTIFF/APPLICANT**

**VERSUS**

**OMAR FEISAL MOHAMMED JAMA...DEFENDANT/RESPONDENT**

**RULING**

1. A Notice of motion dated 11/5/2016 is for directions and or hearing today. The plaintiff/applicant seeks the following orders:-

- a) That this Honourable court be pleased to transfer this suit to the Magistrate's court at Migori**
- b) That the costs of this application be provided for.**

2. I note grounds of the Notice of motion and supporting affidavit sworn on 11/5/2016, by the applicant. These grounds are that :-

- 1) The Magistrate's Court at Migori has both the Pecuniary and Territorial Jurisdiction to hear and determine this suit.**
- 2) All parties reside in Migori within the local limits of the magistrate's court at Migori.**
- 3) The land and subject matter is also situated in Migori within the jurisdiction of the magistrate's court at Migori.**
- 4) The magistrate's court at Migori provides the most comfortable and convenient venue to hear and determine this suit.**
- 5) Orders sought herein will not prejudice any party.**
- 6) It is in interest of justice and fairness that orders sought herein be granted.**

3. I have perused the Notice of Motion , heard Ms. Mireri counsel for the applicant and Mr. Nyagesoa counsel for the respondent. Are the orders sought in the Notice of motion merited ?

4. It is important to note that a court's jurisdiction flows from either the constitution or legislation or both; see Samwel Kamau Macharia & anor Vs. KCB & 2 others (2012) e KLR and Abdallah Vs. Building Centre (K) LTD & 4 others (2014) KLR –SCK.

5. Under Section 38 (1),(2) and (4) of the Limitation of Actions Act (Cap 22 of Laws of Kenya), Originating Summons matters as envisaged therein shall be heard by the High Court. The claim is on title to land by way of adverse possession and by Article 162 (2) (b) Constitution, 2010, it falls within the jurisdiction of the Environment and Land Court. See R- V- Karisa Chengo & 2 others (2017) e KLR.

6. I accordingly find the Notice of Motion unmerited and I disallow it.

7. No orders as to costs.

8. Directions are taken that the originating summons dated 22/8/14 and the replying affidavit sworn on 5/11/2014 be treated as plaint and statement of defence respectively.

9. Mention on 20/3/2018 for pre- trial directions.

10. Parties to ensure full compliance with Order 11 Civil Procedure Rules 2010 on or before 20/3/2018.

**DELIVERED, SIGNED and DATED in open court at MIGORI this 29<sup>th</sup> day of January 2018.**

**G. M. A. ONGONDO**

**JUDGE**

**In the presence of:**

Mr. Mireri counsel for the Applicant

Mr. Nyagesoa counsel for the Respondent

Tom Maurice -Court assistant

**G. M. A. ONGONDO**

**JUDGE**