



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERICHO**

**ELC MISC. APPLICATION NO. 32 OF 2017**

**CHEPTOO EVALINE.....APPLICANT**

**VERSUS**

**FLAMINGO COMPANY LIMITED.....1ST RESPONDENT**

**COSMAS KOECH.....2ND RESPONDENT**

**COUNTY GOVERNMENT OF KERICHO.....3RD RESPONDENT**

**RULING.**

**Introduction**

1. This Ruling is in respect of the Application dated 4<sup>th</sup> August, 2017 seeking that the case filed in Kericho CMCC No. 79 of 2015 be called to this court for directions and the same be transferred to this Court for hearing and final disposal.

2. The Application is supported by grounds stated on the Notice of Motion and on the Applicant's Affidavit sworn on the 4<sup>th</sup> August, 2017. The main reason stated in the affidavit is that at the time the suit in the Lower Court was filed, the Environment and Land Court had not been established at Kericho.

3. The Application is opposed by the 3<sup>rd</sup> Respondent through the Replying Affidavit of Gideon Mutai, the legal Attorney of the County Government of Kericho. In the said affidavit he depones that the application is misconceived as a suit filed in a court without jurisdiction is null and void *ab initio*.

The parties opted to canvass the application by way of written submissions and the same were filed on behalf of the Applicant and the 3<sup>rd</sup> Respondent.

**Applicant's Submissions**

4. In his submissions, learned Counsel for the Applicant has submitted that at the time the suit in the lower court was filed there was no Environment and Land Court in Kericho and the Chief Magistrate's Court was the nearest court that the Applicant could access justice. He argues that according to Article 23 (3) and Article 169 (1) (a) and 2 of the Constitution the Magistrate's Court had jurisdiction to deal with land matters. He further refers to the **Civil Appeal No. 287 of 2016 Nairobi Law Society of Kenya Nairobi Branch Vs Malindi Law Society & 6 Others 2017 eKLR** where the court held that Magistrates Courts have jurisdiction to hear land matters. He submits that in order to ensure access to justice for the parties, the court ought to exercise the wide powers vested in it under Sections 19 (2) (3) (i) of the Environment and Land Court Act and Article 159 of the Constitution.

## **Respondent's Submissions**

5. On the other hand, learned Counsel for the 3<sup>rd</sup> Respondent has taken issue with the provision under which the application is made and clarified that the said section deals with the powers of the Environment and Land Court with regard to prerogative orders.

6. Secondly, he submits that at the time the applicant filed suit in the lower court, the Environment and Land court Act, 2011 had come into effect and the Magistrates Courts had no jurisdiction to entertain land matters. He has cited several authorities where the courts have held that an order for transfer of a suit from one court to another court cannot be made unless the suit has in the first instance been filed in a court which has jurisdiction to try it.

## **Analysis and Determination**

7. The main issue for determination is whether this court has the power to transfer to itself a suit that was filed in court that had no jurisdiction. In **James Davis Njuguna V. James Chacha (sued as Chairman Parklands Sports Club & 3 Others, Nbi HCCC No. 198 of 2012, Omwoyo Vs. African Highlands & Produce Ltd 2002 KLR 698 and John Kibet Rotich V Elijah Kibet Siele Kericho ELC Misc. Application No. 56 of 2016** the courts stated and restated the correct position on law which is that the court can only transfer a case that is filed in the first instance in a court that has jurisdiction to try it.

8. In the instant case, the case filed in the lower court was filed at a time when the lower court had no jurisdiction to try it. However, in view of the recent judgment in **Civil Appeal No. 287 of 2016** Magistrates Courts are now clothed with jurisdiction to hear and determine land matters. In the wider interest of justice and in line with the provision of Article 159 (2) (d) which enjoins the court to administer justice without undue regard to procedural irregularities. I exercise my discretion and direct that **Kericho CMCC No. 79 of 2015** be transferred to this court for hearing and determination. Costs in the cause.

**Dated, signed and delivered at Kericho this 25<sup>th</sup> day of January, 2018.**

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**J. M ONYANGO**

**JUDGE**

### **In the presence of:**

1. Mr. Kirui for Masese for the Applicant.
2. No appearance for the Respondent.