

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 325 OF 2017

JAMES NDIRANGU NG'ANG'A.....PLAINTIFF

VERSUS

KANUBHA MERUBHA VAGHELA.....DEFENDANT

RULING

The defendant, **Kanubha Merubha Vaghela** applies that the order made on 21.9.2017 transferring this matter to Eldoret Environment and Land Court be reviewed on grounds that the plaintiff's claim touches on land parcel numbers Ndivisi/Muchi/6924 and 6925 and that the defendant's counterclaim touches on land parcel number Webuye/Block 1/793 and that on the 21.9.2017, the Honourable Judge sitting at Bungoma ELC No. 85 of 2017 (now 325 of 2017) ordered that the same be transferred to this Honourable court for hearing and determination due to the fact he had handled Bungoma Civil Appeal No. 110 of 2011 which became the subject of Court of Appeal Civil No. 13 of 2016 all touching on the suit parcels herein. The plaintiff is a resident of Busia while the defendant is a resident of Kakamega and Webuye towns all within the former province of Western Kenya. That all the subject land titles fall under the Lands Registry of Bungoma. That the witnesses in this suit include the Land Registrar, Bungoma, the county Surveyor Bungoma, the Western Provincials Surveyor and the Sub-County Administrator, Webuye among others. The order of 21.9.2017 failed to take into account the provisions of section 15 of the Civil Procedure Act, 2010. That it will be too expensive for the parties to transport witnesses to Eldoret. That this matter ought to be heard either at the Environment and Land Court at Kakamega or Busia. That there is need to review the orders of 21.9.2017.

The plaintiff opposes the application on grounds that there is absolutely no justifiable cause to warrant the review, vacation and/or setting aside the Honourable Judge's order issued on 21st September, 2017 and consequently, have this matter transferred to the Environment and Land Court in Kakamega and/or Busia. The learned Judge considered all the requisite and/or relevant factors prior to issuing his order transferring this matter from the Environment and Land Court in Bungoma to this court.

That he is currently a resident of Eldoret town and not Busia as alleged by the defendant. All the witnesses he intends to avail in court are also resident in Webuye save for one who resides in Nairobi. That whereas, the defendant is a permanent resident of Webuye town. That the other witnesses in the suit as correctly pointed out by the defendant are based in Bungoma. That Bungoma and Webuye towns are geographically near Eldoret just as they are to Kakamega and as such, no prejudice will be occasioned to both parties in transporting their witnesses to Eldoret as alleged by the defendant. He is also aware that the Environment and Land Court is seized with unlimited territorial jurisdiction to hear and determine suits. The defendant's application is frivolous, vexatious and an abuse of court process. The application is a futile attempt aimed at delaying the just and expeditious disposal of this suit and it is therefore just, fair and expedient that the same be dismissed.

I have considered the application and supporting affidavit and replying affidavit and do find that there are no grounds for review of the decision of Justice Mukunya transferring this matter to Eldoret. The defendant prays that the matter be heard in Kakamega, however, it is clear that the suit property is registered in Bungoma and therefore, there is no convenience in handling the matter in Kakamega and not Eldoret. The distance between Bungoma and Kakamega and between Bungoma and Eldoret is almost the same. The time likely to be spent in transferring this matter to either Kakamega or Busia can be spent on giving direction for the hearing and determination of the case. I do disallow the application. Parties to take direction.

DATED AND DELIVERED AT ELDORET THIS 12TH DAY OF JANUARY, 2018.

A. OMBWAYO

JUDGE