



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT GARISSA

ELC MISC. NO. 21 OF 2017

MOHAMED IBRAHIM MOHAMED.....PLAINTIFF

-VERSUS-

MUKTAR HABASHOW.....DEFENDANT

RULING

This is an application brought by way of Notice of Motion under section 12, 15, 18 and 3A of the Civil Procedure Rules. The Applicant is seeking to have SPMCC No. 19 of 2014 transferred from Mandera Law Courts to itself for hearing and determination. The application is supported by the affidavit of the Applicant sworn on 2nd October, 2017 together with grounds shown on the face of the said application. It is further supported by numerous receipts and correspondences. The application is filed under certificate of urgency indicating that the issues in controversy are serious issues against the Respondent and the County Government of Mandera in which this court alone is competent to do so.

The application is opposed by the Respondent vide a replying affidavit sworn on 21st December, 2017. In opposition to the application, the Respondent contends that the Principal Magistrate based in Mandera Law Courts has been gazetted to handle Environment and Land matters vide Kenya Gazette Notice Vol. CXIX No. 180. The Respondent further averred that he is a man of meager resources and that all his witnesses are based in Mandera. As such the Respondent argues that it will be very expensive to transport all his witnesses from Mandera to Garissa for the hearing of the case.

Other than the pleadings and the oral submissions, the Respondent who is acting in person and the counsel for the Applicant did not cite any authorities in support or in opposition to this application.

I have considered the application by the Applicant and the replying affidavit in opposition thereto. I have also considered the oral submissions by both sides. Under section 15 of the Civil Procedure Act (Cap. 21 Laws of Kenya) the law requires that, **“every suit shall be instituted in a court within the local limits of whose jurisdiction the Defendant(s) at the time of the commencement of the suit actually and voluntarily reside or carry on business or work for gain.”**

The Respondent has deponed in his replying affidavit that he resides in Mandera Township where he works for gain as a cleaning supervisor at the police department and that all his witnesses reside in the same town. The nearest court within the local limits whose jurisdiction the Defendant actually and voluntarily reside is the Principal Magistrate’s Court in Mandera.

Section 9 (2) of the Magistrate’s Act No. 26 of 2015 states as follows:

“A magistrate’s Court shall:-

(a) In the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act (Cap. 12A) and subject to the pecuniary limits under section 7

(1), hear and determine claims relating to:-

(i) Environmental planning and protection, climate issues, land use planning, title and tenure, boundaries, rates, rents, valuations, mining minerals and other natural resources;

(ii) Compulsory acquisition of land.

(iii) Land administration and management.

(iv) Public, private and community land and contracts choses in action or other instruments granting any enforceable interests in land; and

(v) Environment and Land generally.....”

It is imperative to note that section 26 of the Environment and Land Court No. 19 of 2011 provides thus:

“26 (1) The court shall ensure reasonable and equitable access to its services in all counties.....

(3) The Chief Justice may, by notice in the gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.

(4) Subject to Article 169 (2) of the Constitution, the magistrate appointed under sub-section (3) shall have jurisdiction and power to handle:-

(a) Disputes relating to offences defined in any Act of Parliament dealing with environment and land; and

(b) Matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrate’s Court Act.”

The intention of parliament and the framers of the constitution is loud and clear that court services are devolved to the counties and the nearest local limits to make it accessible to the people. Removing the case from the nearest court with jurisdiction to handle the matter such as the one being sought in this case is to defeat the intention of parliament and the people of Kenya.

In the result, I find no merit in the application dated 4th October, 2017. The same is hereby dismissed with costs to the Respondent.

Read, delivered and signed in the open court this 27th day of February, 2018.

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HON. JUSTICE E. C. CHERONO

ELC JUDGE

In the presence of:

1. Defendant/Respondent

2. Ijabo Court Clerk and in the absence of the Applicant