



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 174 OF 2015

STEPHEN KIBOWEN.....PLAINTIFF

VERSUS

RAYMOND RUTO.....1ST DEFENDANT

KIPKORIR RUTO.....2ND DEFENDANT

KIPROP RUTO.....3RD DEFENDANT

KIPCHUMBA RUTO.....4TH DEFENDANT

CHEPCHIRCHIR RUTO.....5TH DEFENDANT

CHEPKOECH RUTO.....6TH DEFENDANT

RULING

(Application for transfer of this suit from ELC Nakuru to ELC Eldoret on the ground that an issues raise in this suit is directly and substantially an issue in the Eldoret case; the court finds that the suit property is nearer Nakuru than Eldoret and that the Eldoret suit was filed in the year 2017 while this suit has been pending in Nakuru since the year 2015; application dismissed)

1. This ruling is in respect of defendants' Notice of Motion dated 21st March 2017. The application seeks the following Orders:

1. Spent.

2. That this matter be transferred to Eldoret Environment and Land Court for hearing and final determination and be consolidated with Eldoret Environment and Land Case No. 119 of 2017, Jeruto Tapkili Tengekyon and Samwel Kipruto Chepkeitany =Versus= Agricultural Finance Corporation, Kolato Auctioneers and Stephen Kibowen.

3. That costs of this application be provided for.

2. The application is supported by an affidavit sworn by the 1st defendant on 21st March 2017. He deposed that the 2nd plaintiff in Eldoret ELC Case No. 119 of 2017 is his father and is challenging statutory power of sale in respect of the suit property while the plaintiff in this suit is seeking the defendant's eviction. Consequently, the issue raised in this suit is directly and substantially an issue in the Eldoret case.

3. He further deposed that the Eldoret case ought to be heard first since it is challenging exercise statutory power of sale which conferred upon the plaintiff herein the impugned title. He added that Gazette Notice No. 1756 dated 27th February 2009 directs that all matters arising from Baringo County ought to be filed in Eldoret High Court and that this was confirmed by Gazette Notice No. 5178 of 24th July 2014.

4. The application is opposed by the plaintiff through his replying affidavit sworn on 9th October 2017. He deposed that he bought the parcel of land known as Lembus/Kilombe/157 (the suit property) at an auction sale conducted in Nakuru town on 27th May 2014 by Kolato Auctioneers on behalf of Agricultural Finance Corporation (AFC) in exercise of statutory power of sale. That when AFC attempted to resile from the sale, he instituted Nakuru ELC No. 218 of 2014 against AFC and obtained a judgment and decree which led to him being registered as the owner of the suit property.

5. He added that the suit property herein is located in Muserechi area in Baringo County. Muserechi Shopping Centre is 41.6 kilometres away from Nakuru and 129.4 kilometres away from Eldoret Town. In terms of travel time, it takes 58 minutes to travel by road from

Muserechi shopping Centre to Nakuru while it takes two hours and 17 minutes to travel by road from the same centre to Eldoret Town.

6. He further deposed that section 14 of Gazette Notice No. 5178 of 28th July 2014 provides that all new cases relating to environment and the use and occupation of, and title to land be filed in the nearest ELC. That wholesale application of Gazette Notice No. 1756 of 27th February 2009 will result in absurdity since new courts and High Court stations have been created after 27th February 2009 which are not mentioned in the Gazette Notice.

7. He stated that several cases and applications concerning the suit property have been heard and determined at Nakuru or are pending determination at Nakuru. Consequently, he urged the court to dismiss the application.

8. The application was heard on 10th November 2017 by way of oral submissions. In that regard, Mr. Kibii learned counsel appearing for the defendants/applicants submitted that considering that the suit parcel of land is situated within Baringo County and that Gazette Notice 1756 of 2009 direct that all matters arising from the said county ought to be filed at Eldoret, this suit ought to be transferred to Eldoret.

9. He further submitted that the proceedings in Eldoret ELC No. 119 of 2017 are an issue in these proceedings since in the Eldoret case, the plaintiffs are challenging the exercise of statutory power of sale by the Agricultural Finance Corporation while in these proceedings the plaintiff is seeking eviction of the children of the plaintiff in Eldoret ELC 119/2017. He added that if the proceedings in the Eldoret are determined, there is a possibility of collapsing the proceedings in this case and that there is a real risk of conflicting decisions.

10. On her part, Ms. Ogange learned counsel for the plaintiff/respondent submitted that whenever the court has to consider transfer of suit, it should consider convenience of the parties and where the parties reside. She pointed out that none of the parties here are residents of Eldoret and that only the advocates for the applicants and for the plaintiff in ELC No. 119/2017 reside in Eldoret. The court cannot transfer the suit purely for the convenience of the advocates.

11. She added that there is no law that permits the transfer and that there is only one ELC Court but which sits at different towns. She cited the case of **Hangzhou Agrichemical Industries Ltd –vs Panda Flowers Ltd [2012] eKLR**.

12. She further submitted that there is uncontroverted evidence that the suit property is only 41.6 kilometres from Nakuru Town and 129.4 kilometres from Eldoret town and that if Gazette Notice No. 1756 is to be applied as suggested by the applicants, it will lead to an absurdity.

13. In a brief response Mr. Kibii submitted that the court has inherent powers to order a matter before it to be transferred and heard before another court.

14. I have considered the application, the affidavits filed, the authorities cited and submissions by counsel. The applicants have cited **Gazette Notice No. 1756 dated 19th day of February, 2009** as a basis for the application. I note that the said notice was titled “**Practice Directions Relating to The Filing of Suits, Applications and References in Proper Courts**” and gave directions as regards place of filing suits generally. Subsequent to the said notice, the Chief Justice issued another set of directions in **Gazette Notice No. 5178** dated the 25th July, 2014 titled “**Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, And Title to Land and Proceedings in Other Courts**”. These latter directions were more specific to the Environment and Land Court.

15. Paragraph 14 of Gazette Notice No. 5178 dated the 25th July, 2014 states as follows:

All new cases relating to the environment and the use and occupation of, and title to land not falling under paragraph 8 above shall be filed in the nearest Environment and Land Court for hearing and determination by the said court and must be within the purview of the jurisdiction conferred upon the Environment and Land Court with particular regard to the jurisdictional limitations set under Article 162(2) (b) of the Constitution and Section 13 of the Environment and Land Court Act No. 19, 2011.

16. There is evidence before the court that the suit property is nearer Nakuru than Eldoret. This evidence has not been challenged by the applicants. I therefore have difficulty in finding that this suit was properly filed in Nakuru pursuant to paragraph 14 of Gazette Notice No. 5178 dated the 25th July, 2014.

17. I also note that the Eldoret suit was filed in the year 2017 while this suit has been pending in Nakuru since the year 2015. It therefore takes precedence. As regards the fears about conflicting decisions, the parties are at liberty to keep the courts abreast of orders and decisions that may be made in the two different stations.

18. In the end, Notice of Motion dated 21st March 2017 is dismissed with costs to the plaintiff.

Dated, signed and delivered in open court at Nakuru this 15th day of February 2018.

D. O. OHUNGO

JUDGE

In the presence of:

MS. O'Connell holding brief for Mr. Konosi for the plaintiff/respondent

No appearance for the defendants/applicants

Court Assistants: Gichaba & Lotkomoi