



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND AND COURT AT KAJIADO

ELC CASE NO. 359 OF 2017

(formerly Machakos ELC 149 of 2014)

NGURUMAN LIMITEDPLAINTIFF

VERSUS

DAVID NKEDIANYE.....1ST DEFENDANT

JOSEPH OLE LENKU2ND DEFENDANT

JOSEPH NKAISERRY3RD DEFENDANT

PETER MOSITET.....4TH DEFENDANT

TARAIYA KORE.....5TH DEFENDANT

PETER PARIKEN.....6TH DEFENDANT

PERIS TOBIKO7TH DEFENDANT

RULING

What is before Court for determination is the Plaintiff’s application Notice of Motion dated the 15th August, 2017 brought pursuant to Sections 1A, 1B, 3A, 12 and 18(1) b(ii) of the Civil Procedure Act, Order 51 rule 1 of the Civil Procedure Rules and all other enabling provisions of the law. It is based on the following grounds which in summary is the suit land herein known as land reference number NAROK /NGURUMAN /KAMORORA /1 is situated in Narok County. This instant suit was filed at the Machakos High Court on 18th November, 2014 and at that time there was no Environment and Land Court (ELC) Court in Narok or Machakos. The instant matter is a suit for the determination of rights and interest in immoveable property and as such ought to be instituted, heard and determined in the court within the local limits of whose jurisdiction the suit land is situate. Upon the establishment of the ELC in both Kajiado and Narok in the year 2017, the matter was transferred from the ELC Registry at Machakos to Kajiado rather than Narok, despite the fact that the suit property lies within the geographical jurisdiction of the ELC sitting in Narok. The matter was transferred at the instigation of the Advocates on record for the 1st, 3rd, 4th, 5th, 6th, 7th and 8th Defendants vide a letter dated the 19th January, 2017 which letter was not copied to the Plaintiff’s advocates, and contained the false assertion that the suit property is situate in Kajiado. The Plaintiff is unaware of the existence of any order directing that the matter herein be transferred from the ELC sitting at Machakos to the ELC sitting at Kajiado. The Plaintiff therefore has a reasonable apprehension of bias in the matter given that steps have been taken in the matter without due notice being given to it. The suit is yet to be heard on its merits, thus no prejudice would be occasioned to any of the parties.

The application is supported by the affidavit of MARTIN RICHARD STEYN who is a Director to the 1st Defendant where he deposes that the Plaintiff is the proprietor of the suit property. He contends the 1st, 3rd, 4th, 5th, 6th, 7th and 8th Defendants filed their statements of Defence and Counterclaim in which they seek inter alia the cancellation of the Plaintiff’s title to the suit property. Further that at the time of filing this suit, there was no ELC in Narok thereby informing their decision to file the case in Machakos which was the closest court of competent jurisdiction. Subsequently the ELC in Narok was established by the Chief Justice, which court is vested with the necessary geographical and territorial jurisdiction to hear and determine this suit. He reiterates that as far back as 1979 the Narok District Land Adjudication Officer declared the Nguruman/Kamorora area of Loita Location in Osupurko Division of Narok District, the suit property herein, to be an adjudication section under the Land Adjudication Act. He claims at the time of the transfer of the suit land to the Plaintiff, the Plaintiff obtained the necessary Land Control Board consent from the Cis Mara Land Control Board which Board was duly established vide Legal Notice Nos 324 and 325 of 1968. He insists the suit property is located in Narok County as obvious from its title deed, certified copy of the Green Card and the adjudication history. He illustrated that there have been several law suits in relation to the suit land including **Narok RMCC No. 15 of 1991 Nguruman Limited Vs Shompole Group Ranch, Civil Appeal No. 52 of 1993, Nguruman Ltd Versus**

Shompole Group Ranch and HCCC Nos. 145 and 146 of 2001, Nguruman Ltd Vs Shompole Group Ranch & Others, Nguruman Ltd Vs Ol Kirimatian Group Ranch & Others and Civil Appeal No. 73 of 2004 Nguruman Ltd Vs Shompole Group Ranch & 3 Others. He reiterates that all of the determinations of the Honourable Court spanning over 25 years have determined the suit property lies within the former Narok District (now Narok County) thus squarely within the geographical jurisdiction of the ELC sitting at Narok. He states that the Chief Justice vide a Gazette Notice No. 1756 issued Practice Directions relating to filing of suits in proper courts wherein the place of suing is determined in accordance with the provisions of sections 11 to 18 of the Civil Procedure Act. He reaffirms that the instant suit is yet to be heard on its merits, thus no prejudice would be occasioned by any party to the suit herein. He is aware the Defendants are prominent political personalities who have willfully and publicly encouraged the disobedience of court orders obtained by the Plaintiff in the various suits involving the suit land.

The Defendants opposed the application and filed a Notice of Preliminary Objection dated the 18th September, 2017 where they stated that:

1. The Application violates the mandatory provisions of Section 12 of the Civil Procedure Act, it is bad in law and gross abuse of the Court process.
2. The Court has no jurisdiction to transfer the matter from itself to another High Court.

The Plaintiff's and the Defendants' Counsels filed their respective written submissions which I have considered.

Analysis and Determination

Upon perusing the Notice of Motion application dated the 15th August, 2017 including the supporting affidavit, Notice of Preliminary Objection dated 18th September, 2017 as well as the written submissions, the only issue for determination at this juncture is whether this suit should be transferred to Narok ELC for hearing and final determination.

The Court has taken judicial notice of the fact that the title of the suit land states NAROK /NGURUMAN /KAMORORA /1 and this implies the Land Registry bearing the records is based in Narok County. I note there have been several cases involving the suit land that have been handled upto the court of appeal in relation to the suit land. Further that this case is related to Kajiado ELC 340 of 2017. I take judicial notice of the fact that the Court of Appeal in **Civil Appeal No. 73 of 2004 Nguruman Ltd Vs Shompole Group Ranch & 3 Others** held that the suit land is situate in Narok District. It is the Plaintiff's contention that this instant suit was initially filed in Machakos High Court as there was no ELC court in Narok.

Section 12 of the Civil Procedure Act provides as follows:

Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immovable property, with or without rent or profits;**
- (b) for the partition of immovable property;**
- (c) for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;**
- (d) for the determination of any other right to or interest in immovable property;**
- (e) for compensation for wrong to immovable property;**

(f) for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate: Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.'

Section 15 of the **Civil Procedure Act** further provides that:

'Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction— (a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or (b) any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises'

In the current scenario based on the Plaintiff, Defence and Counterclaim, I note the suit land revolves around recovery of land and determination of rights and interest to it. I note the Court of Appeal had already determined that the suit land is based in Narok District which County. Further the Land Control Board that granted consent to transfer land is based in Narok.

THE ENVIRONMENT AND LAND COURT ACT 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 provides as follows:

‘14. 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. 15. Where a matter has been wrongly filed at the Environment and Land Court Registry, the practice directions notably: - Practice Directions Relating to the Filing of Suits, Applications and References in Proper Court (Gazette Notice No. 1756/2009) shall apply, and the matter shall be directed for filing in the appropriate court(s) in tandem with those practice directions.’

Nyarangi JA in **The Owners of Motor Vessel “Lillian S” vs. Caltex Oil Kenya Limited (1989) KLR 1**, clearly established the law on jurisdiction and held as follows:

“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.

I note it is pertinent to deal with the issue as to whether this court has jurisdiction first and whether it can transfer the instant suit to another ELC Court. There is no provision in the ELC Practice Directions or the ELC Act that bars any ELC Court from transferring a suit to another ELC Court with competent jurisdiction. Further, the Court takes judicial notice of the fact that several ELC courts have been established recently in various counties with their jurisdiction clearly stipulated within the Environment and Land Court Act.

I note the ELC in Narok has jurisdiction to deal with all the ELC matters emanating from Narok County.

In the case of **HANGZHOU AGROCHEMICAL INDUSTRIES LTD V PANDA FLOWERS LIMITED[2012] eKLR** Justice G V Odunga held that: **‘The Court is therefore under a statutory obligation while interpreting the provisions of the Act or exercising the powers conferred upon it thereunder to give effect to the overriding objective and in order to attain this objective the court must strive towards ensuring the efficient disposal of the business of the Court, the efficient use of the available judicial and administrative resources and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties. Efficient disposal of the business of the court and efficient use of available judicial and administrative resources would necessitate demand that as much as possible cases be filed within the jurisdiction of the subject matter so as not to clog other registries while others remain unutilised. As for the timely disposal of the proceedings, again it would be prudent that the cases which have been instituted and are already being processed should not be unduly interrupted. The need to have the cases disposed of at a cost affordable to the respective parties on the other hand would call for the court to examine the costs implications involved in carrying out the trial at one place and not another. It is clear therefore that it is a matter of balancing the interests of the parties with the ultimate aim of doing justice.’**

In relying on the authorities cited above including sections 12 and 15 of the Civil Procedure Act and the ELC Practice Directions, which governs the practice in the ELC Courts, in order to achieve the overriding objective of this court, I find no merit in the Defendant’s Notice of Preliminary Objection dated the 18th September, 2017 and appreciate that the ELC Court Narok is vested with the jurisdiction to hear and determine this suit

In the circumstances, and since I have already made similar orders for transfer in the ELC Case No. 340 of 2017 that is related to the instant case as the suit land is one and the same, I hereby allow the Notice of Motion dated the 15/8/2017 and order that this suit be and is hereby transferred to the ELC Narok for hearing and final determination.

Costs will be in the Cause

Dated signed and delivered in open court at Kajiado this 8th day of March, 2018.

CHRISTINE OCHIENG

JUDGE

Present:

Cc Mpoye

Busandy for Plaintiff

N/A for Defendants