



**REPUBLIC OF KENYA**

**IN THE Environment And Land Court At Kajiado**

**Elc Case No. 430 Of 2017**

**(formerly Machakos ELC NO. 171 of 2014)**

**JOHN KAMANGA**

**ISAAC KIRESIAN (Suing on their own behalf and on behalf of Fourteen**

**Thousand Two Hundred Sixty Four -14264 Members and or Residents of**

**Shompole Group Ranch. II Kirimatian Group Ranch, Pakase Irrigation**

**Scheme and Entasopia Irrigation Scheme as per the attached**

**Annexure 'JK1').....PLAINTIFFS**

**VERSUS**

**NGURUMAN LIMITED.....1<sup>ST</sup> DEFENDANT**

**HERMANUS PHILIPUS STEYN.....2<sup>ND</sup> DEFENDANT**

**CHIEF LANDS REGISTRAR.....3<sup>RD</sup> DEFENDANT**

**DIRECTOR LAND ADJUDICATION.....4<sup>TH</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL.....5<sup>TH</sup> DEFENDANT**

**RULING**

The application for determination is the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' Notice of Motion dated the 15<sup>th</sup> 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 that the subject matter of the suit property herein is all that property known as title number NAROK /NGURUMAN /KAMORORA /1. The instant suit was commenced by a Plaintiff filed in the High Court of Kenya at Machakos on 18<sup>th</sup> November, 2014 and is a suit for the recovery of immovable property as well as for the determination of rights including interest in immovable property and as such ought to be instituted, heard and determined in the court within the local limits of whose jurisdiction the property is situate. Further, upon the establishment of an Environment and Land Court (ELC) in both Kajiado and Narok sometime early in the year 2017, the matter was transferred from the Environment and Land Court 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 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 1<sup>st</sup> Defendant where he deposes that as far back as 1979 the Narok District Land Adjudication Officer declared the Nguruman/Kamorora area of Loita Location in Osupurko Division of the Narok District, the suit property herein, to be an adjudication section under the Land Adjudication Act. He avers that at the time of the transfer of the suit property from Nguruman – Kamorora Group Ranch to the Plaintiff, the Plaintiff obtained the necessary Land Control Board Consent from Cis Mara Land Control Board which was established vide Legal Notice Nos. 324 and 325 of 1968 with jurisdiction over property situate in the County of Narok. He contends that the suit property is located in Narok County as obvious from the title deed, certified copy of the Green Card and the adjudication History. He described that there have been 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** where the Court of Appeal held that the suit land is in Narok District. 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 Section 12 of the Civil Procedure Act makes it mandatory that suits for recovery of immovable property should be determined where suit land is situate, with Section 18 of the Civil Procedure Act giving the Court power to transfer the suit .

The Plaintiffs opposed the application and filed a Notice of Preliminary Objection dated the 18<sup>th</sup> 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 Plaintiffs' Counsel and the 1<sup>st</sup> & 2<sup>nd</sup> Defendants' Counsel made their respective submissions to the application, on 4<sup>th</sup> December, 2017, which arguments I have considered.

### **Analysis and Determination**

Upon perusing the pleadings filed herein and materials presented in respect of the Notice of Motion dated the 15<sup>th</sup> August, 2017, the only issue for determination at this juncture is whether this suit should be transferred to Narok ELC for hearing and final determination.

I note the title of the suit land states NAROK /NGURUMAN /KAMORORA /1 and that there have been various suits handled upto the Court of Appeal in relation to the suit land. 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. I note this suit was initially filed in Machakos High Court but upon establishment of the ELC in Kajiado, the same was transferred to Kajiado.

Section 12(a) & (b) 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;**

**(d) for the determination of any other right to or interest in immovable property;**

**where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:’**

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 Plaintiffs' claim, 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 the suit land is based in Narok District which County, and the same was adjudicated by authorities from the then Narok District. Further the Land Control Board that granted consent to transfer the suit 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 foremost before a matter can be heard and determined.

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 necessary 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 Plaintiff’s Notice of Preliminary Objection dated the 18<sup>th</sup> September, 2017 and appreciate that the ELC Court Narok is seized with the jurisdiction to hear and determine this suit

In the circumstances, I allow the Notice of Motion dated the 15/8/2017 and hereby 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 8<sup>th</sup> day of March, 2018.**

**CHRISTINE OCHIENG**

**JUDGE**

**Present:**

CC Mpoye

Busandy for 1<sup>st</sup> and 2<sup>nd</sup> Defendants

N/A for Ojienda for Plaintiffs