



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ENVIRONMENT AND LAND CASE No. 313 OF 2017

PETER B. M. CHIERA.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF NAKURU.....1ST DEFENDANT

WILLIAM KARIUKI GITUNGU2ND DEFENDANT

JOSEPH NYAMAI KATIWA3RD DEFENDANT

RULING

1. This ruling is in respect of plaintiff's Notice of Motion dated 24th July 2017 pursuant to which the following orders are sought:

1. Spent.

2. Spent.

3. That pending the hearing and final determination of this suit this honourable court be pleased to issue an order for injunction restraining the 2nd and 3rd respondents, their employees, servants and/or agents from disposing of or in any other manner dealing or interfering with the suit property.

4. That the OCS Njoro Police Station be ordered to supervise execution of the orders arising from this application.

5. That costs of this application be provided for.

2. The application is supported by an affidavit sworn by the plaintiff. It is deposed in the affidavit that the plaintiff is the owner of a parcel of land known as plot number 'E' 10 Residential at Njoro Squatters 11 measuring approximately 40ft by 80ft (the suit property). The plaintiff states that he has been in possession of the suit property since July 1998. He adds that the 2nd defendant laid claim to the suit property in the year 2014 and as a result, he (the plaintiff) filed another suit being **Nakuru CMCC 869 of 2014** against the defendants herein. He obtained an injunction restraining the 2nd and 3rd defendants in the said case, who also happen to be the 2nd and 3rd defendants in this case, from occupying, putting up structures or interfering with the suit property pending hearing and determination of an application for injunction in the said suit. The inter parte hearing of the application is yet to take place owing to issues of jurisdiction which had affected the subordinate court. Parties had observed the interim orders which were issued by the subordinate court until 10th July 2017 when the 2nd and 3rd defendants assumed ownership of the suit property and started a construction upon it.

3. The application is opposed by the 1st defendant through a replying affidavit sworn by Naomi Bonareri and by the 2nd and 3rd defendants through replying affidavits sworn by themselves. Before going into what is deposed in the replying affidavits and the merits of the application, I have to deal with the issue of the existence of **Nakuru CMCC No. 869 of 2014 Peter B. M. Chiera –vs- County Government of Nakuru, William Kariuki Gitungu, Joseph Nyamai Katwa** and its implications on the proceedings currently before this court.

4. The applicant has readily conceded the existence of the said subordinate court matter and has stated at paragraph 15 of the plaint herein that the subject matter and the parties therein are the same as the subject matter and parties in this case. The applicant's annexure "PBMCC 2" is a copy of an order made on 21st September 2015 by the subordinate court in the said matter. A perusal of the order confirms that the parties and the subject matter therein are the same as those in this case.

5. Though the applicant states that progress of the subordinate court matter has been hindered by questions as to whether the subordinate court has jurisdiction, the Court of Appeal resolved the matter in **Law Society of Kenya Nairobi Branch –vs- Malindi Law Society & 6**

others [2017] eKLR when it stated as follows:

71. By parity of reasoning, although under Article 162 (2) of the Constitution Parliament is mandated to establish courts with the status of the High Court to hear and determine disputes relating to employment and labour relations and environment and the use and occupation of, and title, to land, that in itself does not confer an exclusive jurisdiction to those specialized courts to hear and determine the specified types of cases. However, as already stated, Article 165 (5) is clear that the High Court has no jurisdiction in respect of matters falling within the jurisdiction of the specialized courts. Whereas Parliament is empowered to enact legislation to confer jurisdiction to the Magistrates courts to hear and determine disputes stipulated under Article 162 (2) of the Constitution, it cannot establish a Superior Court or confer upon a Superior Court jurisdiction to hear employment and labour relations cases and environment and land cases.

72. We think we have said enough to demonstrate that we are unable, respectfully, to agree with the interpretation accorded by the High Court to Articles 162(2) and 169 in relation to the power of Parliament to enact legislation conferring jurisdiction on magistrates courts with respect to disputes relating to employment and labour relations and the environment and the use and occupation of, and title to, land.

6. The upshot is that the subordinate court had and continues to have jurisdiction to hear and determine Nakuru CMCC No. 869 of 2014. That being the case, the provision, of Section 6 of the Civil Procedure Act come into play. The Section provides:

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

7. The matters in issue herein are also directly in issue in the subordinate court matter. The subordinate court matter was filed in the year 2014, that is, before this matter was filed. Further, the parties in the subordinate court matter and this matter are exactly the same. In the circumstances, this court cannot proceed with these proceedings, including hearing and determining Notice of Motion dated 24th July 2017. It is for that reason that I have deliberately avoided going into the merits or otherwise of the application as those will be determined by the court that will ultimately hear the application.

8. In view of the foregoing, I make the following orders:

- a) This suit inclusive of the pending Notice of Motion dated 24th July 2017 is hereby transferred to Chief Magistrate's Court Nakuru for hearing and determination.
- b) Chief Magistrate's Court Nakuru to consider consolidation of this matter with Nakuru CMCC No. 869 of 2014.
- c) Costs in the cause.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 12th day of June 2018.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff/applicant

Ms Matu holding brief for Ms Litunda for the 1st defendant/respondent

No appearance for the 2nd and 3rd defendants/respondents

Court Assistant: Lotkomoi