



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**MISCELLANOUS APPLICATION NO. 17 OF 2018**

**JOHN KAMAU NJENGA.....APPLICANT**

**VERSUS**

**JANE WANJIRU NYATEA.....RESPONDENT**

**RULING**

The application for determination is the Applicant's Notice of Motion dated the 9<sup>th</sup> April, 2018 brought pursuant to section 18 of the Civil Procedure Act, Order 40 rule 1 (a) and 4 of the Civil Procedure Rules. It seeks the following orders:

1. Spent.
2. That the court do Transfer Environment and Land Case Number 792 of 2015 from the Magistrate's Court to the High Court, Land and Environment Court at Kajiado under section 18 of the Civil Procedure Act (Cap 21) Laws of Kenya.
3. That the court do determine the application dated ..... filed in the Subordinate Court by the Plaintiff/ Applicant on priority basis.
4. That the costs of the application be provided for.

Which application is premised on the following grounds:

1. That the subject matter is registered in the name of the Plaintiff having purchased it genuinely for sufficient consideration.
2. That the subordinate court expressed its inability to determine CMCC Number 795 Of 2015 due to territorial jurisdiction.
3. That the Respondent has now formed a habit of entering and cultivating on the Plaintiff's property when rains fall and there is a genuine concern that she may enter the property now that it is rainy season.
4. That the Plaintiff/Applicant has demonstrated an arguable case with very high chances of success by producing a certified copy of green card and title deed under section 90 of the Land Registration Act.
5. That this case was filed about three years ago and it is only proper that it is concluded in this court expeditiously.
6. That this court has power to transfer the case and deal with it to conclusion.
7. That the respondent is impecunious and is unlikely to compensate the plaintiff with damages if ordered to do so by this Honourable Court.
8. That it is only just and expedient that the court issues the orders prayed as the balance of convenience tilts to the issuance of the same.

The application is supported by the affidavit of JOHN KAMAU NJENGA who is the applicant herein, where he avers that he filed Civil Case Number 792 of 2015 in the Senior Principal Magistrate's Court at Kajiado before the Environment and Land Court was established. the Magistrate stated that she was incapable of dealing with the Kajiado Civil Case Number 792 of 2015 due to territorial jurisdiction.

The application is opposed by the Respondent who filed a replying affidavit sworn by JANE WANJIRU NYATEA where she avers that the Applicant is her stepson and that there is a suit CMCC No. 792 of 2015 that is pending between the Applicant and herself which is yet to be determined. She contends that the lower court has jurisdiction to hear and determine the suit since the value of the suit land is less than Kshs. 20million. She reiterates that there is no good reason to warrant the transfer of the aforementioned suit from the lower court to the ELC. She denies being served with the application dated the 9<sup>th</sup> March, 2018 as mentioned in prayer No. 3 of the Notice of Motion dated the 9<sup>th</sup> April, 2018. She claims the Applicant has not demonstrated he owns the suit land and that this instant application is mischievous, hence should be dismissed with costs.

On the 23<sup>rd</sup> May, 2018 the Applicant urged the Court to transfer the suit to the ELC or alternatively to exercise its supervisory jurisdiction and direct the Chief Magistrate to hear and determine the matter as she has jurisdiction over Loitoktok that is under Kajiado County. The Respondent relied on their replying affidavit.

### **Analysis and Determination**

Upon perusal of the Application dated the 9<sup>th</sup> April, 2018, including the supporting as well as replying affidavit, the only issue for determination is whether Kajiado CMCCC No. 792 of 2015 should be transferred to the Environment and Land Court for hearing and final determination.

I note the fulcrum of the dispute in the Kajiado CMCCC No. 792 of 2015 revolved around trespass to land which measures approximately 2 acres with a value of less than Kshs. 20 million. I note the disputed parcel is situated in Loitoktok within Kajiado County. The Honourable Chief Justice had granted the Chief Magistrates' Court capacity to hear and determine disputes relating to land with a pecuniary limit of Kshs. 20 million. I note that the Chief Magistrate at Kajiado is in charge of the whole of Kajiado County and I concur with the Applicant that she has jurisdiction to hear suits emanating from Loitoktok. In so far as the suit land LOITOKTOK/EMPERON/ 1139, which is in dispute in the Kajiado CMCC No. 792, is situated within the territorial jurisdiction of the PMs Court in Loitoktok, I note that the SRM sitting at Loitoktok Law Courts has a pecuniary jurisdiction of Kshs. 7 Million and hence not legally capacitated to hear and determine the dispute herein.

It is against the foregoing that I decline to allow the application dated the 9<sup>th</sup> April, 2018 and direct that the Kajiado CMCC No. 792 of 2015 be heard and determined by the Kajiado Chief Magistrate.

The Costs of this application will be in the cause.

**Dated signed and delivered in open court at Kajiado this 16th day of July, 2018.**

**CHRISTINE OCHIENG**

**JUDGE**