



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE NO. 42A OF 2016

KIPKEMBOI KIPTIM MARIANI.....PLAINTIFF

VERSUS

PAULINE AWOIDEFENDANT

RULING

1. This matter was scheduled for hearing before me on 16th May 2018 when Counsel for the plaintiff made an oral application that the suit be transferred to Chief Magistrate's Court Nakuru for hearing and determination. Counsel for the defendant while agreeing that the matter be transferred to the subordinate court, submitted that the ought to be transferred to Chief Magistrate's Court at Molo since that is the court with territorial jurisdiction.

2. Since parties could not agree on the appropriate court, and considering that evidence was necessary in the circumstance, I ordered that parties file affidavits on that issue. Consequently, the defendant filed an affidavit on 30th May 2018. The plaintiff did not file any affidavit, choosing instead to rely on the Replying Affidavit which had been filed much earlier on 23rd January 2018.

3. It is necessary to recap the nature of the claim put before the court by the plaintiff. The following prayers are sought in the plaint:

a) An order of temporary injunction restraining the defendant herein whether by herself, her agents and/or servants from invading, trespassing, cultivating or in any way whatsoever interfering with the plaintiff's quiet possession and use of LR Number Nakuru/Ngongongeri/812 currently occupied by the plaintiff.

b) An order of permanent injunction restraining the defendant herein whether by herself, her agents and/or servants from invading, trespassing, cultivating or in any way whatsoever interfering with the plaintiff's quiet possession and use of L.R Number Nakuru/Ngongongeri/812 currently occupied by the plaintiff.

c) Costs of this suit.

d) Interests on (c) above at court rates.

e) Any other or further relief that this honourable court may deem fit and just to grant.

4. The defendant responded to the suit by filing a defence and Counterclaim in which she sought dismissal of the plaintiff's suit and judgment for:

a) A declaration that the defendant (now the plaintiff) is the lawful and beneficial owner of all that parcel of land known as Nakuru Ngongongeri/812.

b) A declaration that the plaintiff (now defendant) is the trespasser to the suit premises and does not have any proprietor registrable and/or any known interest whatsoever in the suit premises.

c) An order restraining the plaintiff (now the defendant) by himself, his representative and/or any of his authorized agents from trespassing, encroaching, claiming and/or in any manner interfering with the suit premises herein Nakuru/Ngongongeri/812.

d) An order that the plaintiff pays a sum of Kshs.115, 850/= as costs of damage and expenses and loss incurred by the plaintiffs acts of damage of land and destruction of crops.

e) An order of general damage for loss of use of land that was destroyed by the herbicides.

f) Costs of the suit and interest at court rates.

5. The defendant deposed in her affidavit filed on 30th May 2018 that the parcel of land known as Nakuru/Ngongongeri/812 (the suit property herein) is located in Kalyet Village, Lamina Sub Location, Ndoswa Location, Molo Sub County in Nakuru County. She added that the matter ought to be transferred to Molo Chief Magistrate's Court since there is a magistrate there gazetted to handle environment and land matters.

6. In the replying affidavit filed by the plaintiff on 23rd January 2018, it was deposed that the matter ought not to be transferred to CM Court at Molo since there is no magistrate in that court who is gazetted to handle environment and land matters.

7. Parties urged the court to make a determination on the basis of the material on record.

8. This court has jurisdiction, pursuant to **Section 18** of the **Civil Procedure Act**, to transfer a suit from itself to the subordinate court. Parties herein do agree that this suit ought to be transferred to the subordinate court. They only differ on whether it ought to be transferred to Chief Magistrate's Court at Nakuru or to Chief Magistrate's Court at Molo.

9. The guiding considerations are firstly where the suit property is located and secondly whether the court to which it is to be transferred has a magistrate who is gazetted to handle environment and land matters.

10. **Section 12 (a)** and **(d)** of the **Civil Procedure Act** specifies where suits for determination of rights or interests in immovable property ought to be filed. It provides:

12. 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:

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.

11. The suit property herein is Nakuru/Ngongongeri/812 and this suit seeks determination of rights or interests concerning its ownership and possession. The defendant has eloquently explained in her affidavit that the property is located in Molo Sub County. The plaintiff has not tendered any contrary evidence in that regard. I therefore accept as correct that the property is located in Molo Sub County. Needless to state, the property is therefore located within the local limits of the jurisdiction of the Chief Magistrate's Court at Molo.

12. Regarding the question of whether there is any magistrate at Chief Magistrate's Court at Molo who is gazetted to handle environment and land matters, suffice it to state that this court exercises supervisory jurisdiction over the Chief Magistrate's Court at Molo. The court is aware that there are magistrates in that court who are duly gazetted to handle environment and land matters.

13. In view of the foregoing, this suit is hereby transferred to Chief Magistrate's Court at Molo for hearing and determination.

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

D. O. OHUNGO

JUDGE

In the presence of:

Mr Karanja for the plaintiff/respondent

No appearance for the defendant/applicant

Court Assistants: Gichaba & Lotkomoi