



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC MISC. APPL. NO. 2 of 2016

ABDULRAHMAN ERIAH WAMALA.....PLAINTIFF

VERSUS

THE CHIEF OFFICER OF LAND

COUNTY GOVERNMENT OF TURKANA.....1ST DEFENDANT

THE COUNTY EXECUTIVE OF LANDS,

COUNTY GOVERNMENT OF TURKANA.....2ND DEFENDANT

SAMUEL NAKOLI.....3RD DEFENDANT/APPLICANT

R U L I N G

1. The application dated **23/2/2016** and filed in court on **24/2/2016** has been brought by the applicant. It seeks the following orders:-
 - (a) That the honourable court be pleased to withdraw Resident Magistrates Civil Case No. 7 of 2015 filed at Lodwar Courts and transfer it to the Environment and Land Court at Kitale for hearing and disposal.
 - (b) That the honourable court be pleased to set aside the ruling of the Late Hon, I.O. Odhiambo RM issued on the 23rd day of October, 2015.
 - (c) Costs of this application be provided for.
2. The applicant has brought the application under *Section (13) of the Environment and Land Court Act, Section (101) of the Land Registration Act, Section (18) of the Civil Procedure Act, Order (40) Rules (7), and Order (51) Rule (1) of the Civil Procedure Rules.*
3. The grounds upon which the application is made are contained at the foot of the application. They are that:- the plaintiff is in illegal occupation of the suit property that has been earmarked by the County Government of Turkana for the construction of a recreational centre; that the plaintiff moved the court and was issued a temporary injunction that was irregular as it barred the defendants from dealing in the suit land till the final determination of the suit; that the orders granted were of a permanent nature and not temporary; that the suit filed in the Resident Magistrates Court at Lodwar relates to land ownership and the Magistrate's Court lacks the pecuniary jurisdiction to adjudicate over this matter and that the Environment and Land Court at Kitale has the exclusive and original jurisdiction to hear and determine disputes concerning land ownership in the area.
4. The application is supported by the affidavit of the applicant dated **23/2/2016**. It reiterates the grounds at the foot of the application.
5. The application is unopposed.
6. The plaintiff filed his submissions on **19/10/2018**.
7. The main issue for determination in the instant application is whether *Lodwar PMCC No. 7 of 2015* qualifies for an order of transfer from the Magistrate's Court to this court for hearing and final disposal.
8. I find that this application is not in good order for the reasons that first, there is no suit before me and yet the application names the plaintiff in the suit sought to be transferred as the plaintiff in these proceedings. This court finds that manner of drafting of documents to be quite confusing and therefore objectionable.

9. Secondly, if there is any issue relating to jurisdiction it is in my view proper to raise it with the court handling the matter which would if convinced make an order downing its tools for want of jurisdiction, in default of which an appeal on the issue of jurisdiction will lie to this court.

10. Thirdly, a suit can only be transferred from one court to another court only if the court before which the matter was initially filed had jurisdiction at the time of the institution of the suit to entertain the same.

11. In the case of *Sarah Chelagat Samoei v Musa Kipkering Kosgei & another [2013] (E&L MISC APP 10 OF 2013 at Eldoret) eKLR* the court observed as follows:

“If however, we are to assume that the Magistrate's Court did not have the pecuniary jurisdiction to hear the matter for want of pecuniary jurisdiction, then there is nothing to transfer, since the authorities hold that if a matter is filed in a court that is devoid of jurisdiction, the same cannot be transferred to a court which has jurisdiction. These holdings are laid out in the authorities supplied by Mr. Kipnyekwei for the respondents. In Charles Wainaina Njehia v Barclays Bank of Kenya (2006) eKLR the applicant sought to transfer a suit whose value was Kshs. 1,600,000/= from the Magistrate's Court to the High Court. The application was dismissed, the court holding that if the matter was filed in a court with no jurisdiction, the suit was a nullity ab initio and there was nothing capable of being transferred as the suit itself was a nullity. The court further reasoned that there was an express provision of law which barred the filing of the suit in the Magistrate's Court and therefore the suit was filed in breach of the law.”

12. In this case it appears that the applicant is conceding that from inception the magistrate's court did not have jurisdiction to entertain the suit and in my view, that defeats the instant application.

13. The application dated 23/2/2016 is hereby dismissed with costs to the respondent.

Dated, signed and delivered at Kitale on this 14th day of November, 2018.

MWANGI NJOROGE

JUDGE

14/11/2018

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Munialo holding brie for Kaosa for plaintiff

N/A for defendants/respondents

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

14/11/2018