

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

LAND CASE NO. 240 OF 2017

EMILY CHELAGAT KOECH.....PLAINTIFF/APPLICANT

VERSUS

JOEL KIPRONO MUTAI.....DEFENDANT/RESPONDENT

RULING

This ruling is in respect of an application dated 8th February 2018 brought by way of notice of motion by the plaintiff/applicant for orders that the court do transfer this suit from the Environment and Land Court to the High court for hearing and determination.

Counsel for the plaintiff applicant submitted that the suit relates and touches on properties that were acquired during the existence of the marriage between the plaintiff and the defendant and therefore the High Court is competent and has jurisdiction to determine the matter and that the Environment and Land Court does not have full jurisdiction to as the said properties are matrimonial properties.

The defendant's Counsel opposed the application on the grounds that the court lacks the jurisdiction either to entertain or transfer the suit as the plaintiff admits in her pleadings that the matter is about matrimonial property and not a land dispute. That the properties listed include several motor vehicles which cannot fall under the definition of land.

Counsel further submitted that there are other similar matters touching on the same subject matter in two other courts namely, HCCC No. 10 of 2013 (OS) and Eldoret CMCC Divorce Cause No. 16 of 2012 which was formally commenced as Eldoret HCC Divorce Cause No. 2 of 2012 which are still pending.

Analysis and determination

From the pleadings and the submissions of Counsel, it is clear that this is a matrimonial dispute. The court could have had jurisdiction if it was touching on land only and not distribution of the properties. The plaintiff has listed many motor vehicles which the court has no jurisdiction to handle. This court cannot distribute matrimonial property where parties to a marriage have a dispute. If it was an issue of ownership of a parcel of land then the court would have dealt with it.

The plaintiff was well aware that when filing the suit she must have known where and which court to file the same. This is very important in order not to face the issue of lack of territorial, pecuniary and subject matter jurisdiction. The court has discretionary powers in transfer of suits but this is not a case which the court would exercise such powers to transfer. The plaintiff is better off filing a fresh suit in the relevant court if she so wishes of pursue the pending cases that she has filed in the other courts in respect of the same subject matter.

With the above I decline to grant the orders and dismiss the application and strike out the entire suit with costs to the defendant.

Dated and delivered at Eldoret this 11th day of December, 2018.

M. A ODENY

JUDGE