



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

MISCELLANEOUS APPLICATION No. 191 OF 2016

DAVID KITUR LANGAT.....1ST APPLICANT

JAMES KIPTONYE LANGAT (Suing as legal representative of

the estate of the late CHEPKWON SITONIK).....2ND APPLICANT

VERSUS

MABWAI MULAY KOSKEI.....1ST RESPONDENT

DISTRICT LAND SURVEYOR NAKURU.....2ND RESPONDENT

DISTRICT LAND REGISTRAR NAKURU.....2ND RESPONDENT

RULING

(An application to transfer a suit from magistrate's court to the Environment and Land Court; the suit was filed in the year 2014; whether magistrate's court had jurisdiction; whether if magistrate's court had no jurisdiction the applicants who were unrepresented when filing the suit should be indulged; held that magistrate's court had no jurisdiction and that the law applies uniformly; application dismissed)

Introduction

1. What is before the court for ruling is the applicants' Notice of Motion dated 17th May 2016. The application seeks the following orders:

a)

b) *That the honourable court be pleased to transfer NAKURU CMCC No. 590 OF 2014 to the High Court for determination.*

c) *That costs be in the cause.*

2. The application is based on the grounds inter alia that the applicants filed the case in the subordinate court while acting in person and that the orders sought in the subordinate court can only be granted by this court.

3. The application is supported by the affidavit of David Kitur Langat, the 1st applicant.

Applicants' Case

4. The applicants filed CMCC No. 590 of 2014 in the Chief Magistrate's Court at Nakuru on 25th June 2014. In the said suit the applicants herein are the plaintiffs while the respondents herein are the defendants.

5. The prayers in the plaint were for an injunction to restrain the defendants from entering, remaining on or dealing with parcels of land known as MITI MINGI BLOCK 3/1392 (BARUT) and for cancellation of the title documents of MITI MINGI BLOCK 7485. The later plot is said to have resulted from a subdivision of the former.

6. A copy of the title deed which is annexed to the affidavit in support of the application shows that the correct title number of the first plot is MITI MINGI/MBARUK BLOCK 3/1392 (BARUT). The property was registered under the Registered Land Act (Repealed).

7. The applicants basically concede that they filed the suit in a court without jurisdiction. Counsel for the applicants however submits that the applicants were acting in person and their mistake in this regard should be attributed to ignorance of the law. Counsel submitted that Article 159(d) of the constitution provides a cure since it enjoins the court to do justice without undue regard to technicalities and that justice would be served if the application is allowed.

8. Besides filing a memorandum of appearance, the 2nd and 3rd respondents did not respond to the application.

9. The 1st Respondent opposed the application and filed a Replying Affidavit and List of Authorities. The 1st respondent's position is that CMCC No. 590 of 2014 was filed in a court without jurisdiction and therefore the same cannot be transferred to this court.

10. I have considered the submissions by counsels. The issue to be determined first is whether the case was filed in a court with jurisdiction.

11. There is no dispute that the case concerns title to, use and occupation of land. Pursuant to the provisions of Article 162(2) (b), parliament enacted Environment and Land Court Act, No, 19 of 2011 (ELC Act). The President assented to the statute on 27th August 2011 and the new law came into force on 30th August 2011.

12. This court was established pursuant to the provisions of section 4 of the ELC Act. Pursuant to section 13 (1) of the same Act, the court was clothed with jurisdiction to determine all disputes concerning the environment and use, occupation of and title to land. The pioneer judges of the court were gazetted on 3rd October 2012. The court commenced operations on 5th November 2012 when the judges were sworn into office and posted to various stations across the country.

13. After enacting Environment and Land Court Act, No, 19 of 2011 parliament also enacted the Land Registration Act, No. 3 of 2012 and the Land Act, No. 6 of 2012. Both were assented to on 27th April, 2012 and came into operation on 2nd May, 2012.

14. Pursuant to the provisions of section 109 of the Land Registration Act, the Registered Land Act was repealed. The word "Court" is defined at section 2 of the Land Registration Act as:

the Environment and Land Court established by the Environment and Land Court Act, 2011 (No. 19 of 2011), and other courts having jurisdiction on matters relating to land;

15. More specifically, the word "Court" is defined at section 2 of the Land Act as:

the Environment and Land Court established under the Environment and Land Court Act, 2011

(No. 19 of 2011)

16. CMCC No. 590 of 2014 was filed on 25th June 2014. There is therefore no dispute that as at the time the case was filed, the Environment and Land Court was already in existence. The case ought therefore to have been filed in this court. In these circumstances, it is clear that the Chief Magistrate's Court did not have jurisdiction to determine the issues raised in the case.

17. Counsel for the applicants has admitted that the Chief Magistrates Court did not have jurisdiction. Counsel has urged the court to take into account that the applicants were unrepresented when they filed the case.

18. Jurisdiction as it has repeatedly been held is everything. It cannot be conferred by consent, judicial innovation or accommodation. It is now settled law that a case filed in a court without jurisdiction cannot be transferred. In **Charles Omwata Omwoyo v African Highlands & Produce Co Ltd [2002] eKLR** Ringera J stated as follows:

*In **KAGENYI V MISIRAMO & ANOTHER** [1968] E.A. 48, Sir Udoma Udoma C.J. held in relation to Section 18 of the Uganda Civil Procedure Act - a provision which is in **pari materia** with section 18 of our code- that an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first place brought to a court which has jurisdiction to try it..... And in the very early case of **MENDONCA V RODRIGUES** [1906-1908] 2KLR 51, Hamilton J. held that the High Court do not have power to order a transfer of the suit on the ground of want of jurisdiction only. The principle of law to be gleaned from those authorities is that the High Court cannot exercise its discretion to transfer a suit from one court to another if the suit is filed in the first place in a court which does not have the pecuniary and/or territorial jurisdiction to try it. That is the case here.....*

The plaintiff's advocate has made a passionate plea to this court that to dismiss the application would be tantamount to punishing the plaintiff for the mistake of his advocate. That may very well be so. However, I am of the opinion that if a court has no jurisdiction to do something it cannot do so in what is said to be the interests of justice. The interests of justice are forever best served by upholding the law and not bending it to suit the individual circumstances of cases before the court.

19. Whereas it has been admitted that the Chief Magistrates Court did not have jurisdiction, the applicants have urged the court to take into account that they were unrepresented when they filed the case. They in effect would like the court relax the settled guidelines for determining whether a suit ought to be transferred.

20. On issues on jurisdiction, there is no basis for subjecting litigants to different sets of standards. The law should apply uniformly. Just as in the **Omwoyo** case, this court cannot disregard the fact that the Chief Magistrate's court did not have jurisdiction.

21. It follows therefore that the application must fail. It is dismissed with costs.

Dated, signed and delivered in open court at Nakuru this 31st day of March 2017.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the applicants

Mr. Ogola for the 1st respondent

No appearance for the 2nd and 3rd respondents

Court Assistant: Gichaba