



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

MISC. CIVIL APPL. NO. 189 OF 2014

SAMUEL KIMONDO THEURIAPPLICANT

VERSUS

HON. GEORGE MUTUA NDOTTO.....RESPONDENT

RULING

1. The Application before me is the one dated 11th December, 2014. In the Application, the Applicant is seeking for the following orders:

a. That this Honourable Court be pleased to withdraw CMCC No. 209 of 2014 now pending before the Chief Magistrate's Court, Kitui and thereafter transfer the same for trial or disposal to the High Court of Kenya at Machakos, (Environment and Land Court Division).

b. That the Respondent herein do give sufficient undertaking as to damages.

c. That the costs of this Application be in the suit.

2. The Application is premised on the grounds that the Chief Magistrate at Kitui does not have jurisdiction over the cause of action which relates to land with an assessed value of Kshs. 35,000,000.

3. The Applicant has deponed that he is the registered proprietor of land known as **Kitui Municipality Block 1/658**; that he is the Defendant in CMCC No. 209 of 2014 and that the suit property is valued at Kshs. 35,000,000.

4. In response, the Respondent deponed that the Applicant was registered as the proprietor of the suit property through fraud; that he is the one in occupation of the said land and that the value of the suit property is Kshs. 6,700,000.

5. According to the Respondent, the Chief Magistrate in Kitui has jurisdiction to deal with the dispute.

6. The Applicant's counsel submitted that since there are two contradicting valuation reports, it would be prudent to have the suit heard and determined in this court; that at present, Magistrates are not hearing land matters and that the suit should be heard by this court.

7. The Respondent's counsel submitted that the value of the land in question falls within the pecuniary jurisdiction of the subordinate courts.

8. The only issue for determination is whether the Chief Magistrate's Court in Kitui, whose pecuniary

jurisdiction is Ksh. 20,000,000 can here the dispute herein.

9. Although the Applicant's claim is that the suit property is valued at kshs. 35,000,000, the Respondent has averred that the value of the land is Kshs. 6,700,000.

10. I have perused the valuation reports exhibited by the Applicant and the Respondent.

11. The valuation report annexed on the Applicant's Affidavit shows that the developments on the suit property are valued at Kshs. 5,000,000 while the land itself is valued at Kshs. 30,000,000.

12. On the other hand, the valuation report annexed on the Respondent's Affidavit omitted all together to value the developments on the suit property. In his report, the valuer has taken pictures of the structures which are on the land, and under those pictures, he states as follows:

“The semi permanent developments that are ignored for purposes of this report and valuation.”

13. It is therefore obvious that the valuation report annexed on the Respondent's Affidavit did not take into consideration the value of the developments on the land.

14. It is trite that when valuing land, the value of the land includes the fixtures on the land.

15. Having not valued the fixtures on the suit land, the only conclusion that this court can arrive at is that the value of the suit land is more than the Kshs. 6,500,000 indicated in the Respondent's Affidavit.

16. Considering the disparity in the two (2) valuation reports, and in view of the fact that the pecuniary jurisdiction of this court is unlimited, it is safer if the matter that was filed in the lower court is transferred to this court for hearing and disposal.

17. For those reasons, I allow the Application dated 1st December, 2014 in terms of prayer number 1.

DATED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE