



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

MISC. CASE No.298 OF 2016

JOSEPH NJUGUNA KIMANI.....1ST PLAINTIFF

VERSUS

JOHN KIMANI.....1ST DEFENDANT

SILAS MISOI YEGO2ND DEFENDANT

GEOFFREY NDUNGU GICHERE3RD DEFENDANT

SIMEON OTIENDE OWUOR4TH DEFENDANT

DAVID MEUMA MULULU(Sued

as Trustee of A.I.C Church)5th DEFENDANT

RULING

1. The applicant herein filed notice of motion dated 17th August 2016 seeking the following order:

That the honourable court be pleased to order transfer (Sic) Nakuru CMCC No. 546 of 2014 to the Nakuru High Court.

2. Upon being served with the application the respondents filed Notice of Preliminary Objection dated 12th April 2017. The grounds of the preliminary objection are:

1. THAT this honourable court lacks jurisdiction to transfer a suit from the subordinate court to itself when the subordinate court had no jurisdiction to entertain the suit in the first instance.

2. THAT the suit sought to be transferred is a nullity ab initio and the High Court cannot transfer nullities to itself.

3. THAT the High Court has no power to order a transfer of a suit from one Court to another if the original court where the suit was filed had no jurisdiction to entertain the suit.

3. Parties agreed to dispose of the preliminary objection by way of written submissions. Accordingly respondents filed their submissions on 26th April 2017 while the applicant filed his submissions on 4th May 2017. I have considered the preliminary objection and the submissions filed by both sides. I have also perused the Amended Plaint in CMCC No. 546 of 2014 which was annexed to the affidavit in

support of the application for transfer of the suit. I note that in CMCC No. 546 of 2014 the applicant herein seeks judgment against the respondents herein for:

ai) *An order permanent injunction restraining the defendant either by themselves, their servants, their agents, and/or employees from trespassing, encroaching, developing, alienating, disposing off and/or in any other manner dealing with the applicant's parcel of land known as Land Reference No. 27601/9 whatsoever.*

bi) *An eviction order restraining the defendants from dealing with the applicant parcel of land known as Land Reference No. 27601/9.*

There is therefore no doubt that the applicant's claim in CMCC No. 546 of 2014 concerns use and occupation of the aforesaid parcel of land. Further going by the case number it is clear that the suit was filed in the year 2014.

4. Pursuant to the provisions of Articles 162 (2) (b), parliament enacted the Environment and Land Court Act No.19 of 2011 which came into force on 30th August 2011. Section 13 (1) of the Act confers jurisdiction to determine all disputes concerning the environment and use, occupation of and title to land on this court.

5. Parliament also enacted the Land Registration Act No. 3 of 2012 and the Land Act No. 6 of 2012 both of which came into operation on 2nd May 2012. Both Acts define "Court" to mean the Environment and Land Court established under the Environment and Land Act No. 19 of 2011. More specifically in 2014 when CMCC No. 546 of 2014 was filed Section 101 of the Land Registration Act stated:

The Environment and Land Court established by the Environment Court Act, 2011 (No. 19 of 2011) has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act

Similarly, as at the year 2014, Section 150 of the Land Act provided:

The Environment and Land Court established in the Environment and Land Court Act is vested with exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.

6. It is clear from the foregoing that the subordinate courts did not have jurisdiction in matters concerning title to, use and occupation of land as at the year 2014 when the suit sought to be transferred was filed in the Chief Magistrate's Court at Nakuru. The applicant himself appreciates that the Chief Magistrate's court lacks jurisdiction as he specifically states so at ground 2 of the Notice of Motion and at paragraph 5 of the supporting affidavit.

7. It is settled law that a suit filed in a court without jurisdiction cannot be transferred and that there is no jurisdiction to transfer such a suit. 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 **parimateria** 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.

8. CMCC No. 546 of 2014 having been admittedly filed in a court without jurisdiction, this court lacks jurisdiction to order its transfer to this court or to any other court.

9. In the end, the preliminary objection is upheld. Notice of Motion dated 17th August 2016 is dismissed with costs to the respondents.

Dated, signed and delivered in open court at Nakuru this 23rd day of June 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Ms. Njeri Njagua holding brief for Mr. Simiyu for the applicant

Mr. Karanja Mbugua for the defendants/respondents

Court Assistant: Gichaba