



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**ELC MISCELLANEOUS APPLICATION NO. 33 OF 2015**

**CHRISTOPHER NASOKHO ODITO.....PLAINTIFF/APPLICANT**

**VERSUS**

**COUNTY GOVERNMENT OF KAKAMEGA...DEFENDANT/RESPONDENT**

**RULING**

*Christopher Nasokho Odito* has brought this application against the *County Government of Kakamega*, claiming that he filed Civil Suit No. 48 of 2015 in Kakamega and prayed that the suit be transferred from Kakamega to the High Court Eldoret for hearing and determination. The application is based on grounds that the applicant herein filed a Plaint in Kakamega court (Land & Environment) on 28.02.2015 for a permanent injunction restraining the defendant from encroaching into the suit property Kakamega/Kongoni/50. The same has never taken off, because the Kakamega High Court lacks jurisdiction to entertain the matter for the reasons that the Judges deployed therein are not gazetted. That unless the subject matter is heard and determined expeditiously before a competent Judge, the applicant herein stands to suffer irreparable loss and damage. That the order dated 27.02.2015 was disobeyed by the respondents herein who have encroached into the applicant's parcel of land by destroying fence. That the applicant herein made an application dated 27.04.2015 acting the Governor of Kakamega County for contempt of court in respect to the interim injunction order. The same contempt proceedings have been overtaken by events to the detriment of the order that was disobeyed. That no party shall be prejudiced in the event that this application is allowed. That it is in the interest of justice that this application is allowed.

The application is supported by affidavit of Christopher Nasokho Odito who states that he instituted this claim on 26.2.2015 against the respondent herein. That he simultaneously applied for a temporary injunction to restrain the respondent from proceeding with the encroachment of the parcel of land known as Kakamega/Kongoni/50. That He is aware through his own personal knowledge that the court granted the said orders on 27.02.2015. That the respondent has failed and/or willfully neglected to obey the court order by internationally failing to uphold the interim injunction stopping them from interfering with the suit parcel. That the defendant is therefore in contempt of the court order.

That his advocates on record prepared an application at the Kakamega High Court dated 5.11.2015 to have the suit transferred to Eldoret High Court. That he is informed by his Advocates on records, which information he verily believes to be true that an order to that application was issued by the Deputy Registrar, Kakamega High Court, indicating the High Court of Kenya at Kakamega lacked jurisdiction to hear and determine this suit. That it is only fair and just that this suit be transferred to a competent court so that it is heard and determined expeditiously on merit. That he stands to suffer irreparable loss and damage if the matter is not expeditiously heard before a competent court.

The respondent filed grounds of opposition stating that the application for transfer ought to be made in the file Kakamega ELC No. 48 of 2015 and the matters arising determined therein and that this court lacks jurisdiction to entertain the instant application and to grant orders sought since by doing so the court will be proceeding in vacuo. That the defendant has not disobeyed or breached any court order and the application herein is premised on a deliberate misrepresentation of facts. In any event, the matters raised in the instant application can only be canvassed in the parent file.

According to the respondent, the plaintiff has not demonstrated how he will suffer irreparable loss or damage. In any event, the plaintiff has claimed specific and general damages in its Plaint which are capable of compensating the plaintiff adequately. That the plaintiff has not demonstrated the urgency of

the matter given that the interim application was already overtaken by events and is spent. In any event, this Honourable Court should take Judicial notice of the fact that the Environment and Land Court Judges are being recruited and the Kakamega Environment and Land Court will be operational soon. That transfer of the matter will occasion additional and unnecessary expense and inconvenience for the defendant, its witnesses and counsel. That the application herein is without any basis, is bad in law, misconceived and lacks merit. In any event, this Honourable Court lacks jurisdiction to grant the prayers sought. The application ought to be dismissed with costs.

On 29.7.2016, the court made an order that parties to file exchange submissions but the same has not been done and therefore, technically necessitating a delay in the ruling.

I have considered the application on record and the grounds of opposition and such factors as the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and maintaining the witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship and do find that it is in the interest of justice that the matter be heard in Kakamega as the property under dispute is registered in the Kakamega County Land registry. In any event, there is Environment and Land Court Judge in Kakamega. The application is not allowed. No order as to costs.

**DATED AND DELIVERED AT ELDORET THIS 17<sup>TH</sup> DAY OF AUGUST, 2017.**

**A. OMBWAYO**

**JUDGE**