

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C. MISC. CASE NO. 3 OF 2017

PETER KARIUKI NJERU.....APPLICANT

VERSUS

ERASTUS GILBERT KIMANI.....1ST RESPONDENT

MURIITHI FRANCIS KIMITA.....2ND RESPONDENT

RULING

1. The Applicant filed a notice of motion dated 3rd April 2017 seeking transfer of Embu CMCC Award No. 47 of 2011 from the CM's court to this court on the basis that the said court had no jurisdiction to entertain the matter.
2. The said application was supported by an affidavit sworn by the Applicant on 31st March 2017 in which it was stated that the CM's court had no jurisdiction to determine land cases.
3. There was no objection to the said application by counsel for the Respondent when the said application came up for hearing.
4. The court is aware that the question of whether or not the magistrates' courts have jurisdiction is pending determination before the Court of Appeal and judgement is expected to be delivered on or about 13th October 2017. Ideally, this court should have waited for the decision of the Court of Appeal before determining this application. However, since the Applicant's notice of motion was prosecuted on 29th June 2017, I shall make a ruling thereon even as we wait for the Court of Appeal Judgement.
5. There being no opposition to the said application, the court hereby allows the notice of motion dated 3rd April 2017 as prayed. There shall be no order as to costs.
6. Orders accordingly.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **26th** day of **SEPTEMBER, 2017**

In the presence of Mr Omakalwala for the Applicant and Mr Okwaro holding brief for Ms Rose Njeru for Respondent.

Court clerk Njue/Leadys

Y.M. ANGIMA

JUDGE

26.09.17