



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT GARISSA

MISC. CIVIL APPL. NO. 8 OF 2017

LENA MUMBI KANO..... APPLICANT

VERSUS

GEDION MWATHE MUTISYA..... RESPONDENT

RULING

The application giving rise to this ruling is the Notice of Motion brought under Section 17 1A, 3A CPA and Order 17 and 51 CPR. The applicant is seeking an order that PMCC No.3 of 2015 (Mwingi) between the parties herein be withdrawn and/or transferred to the Environment and Land Court at Garissa for hearing and determination. The application is supported on the grounds shown on the face of the said application and an affidavit sworn by the applicant on 24/4/2017.

The application is opposed with grounds of opposition and a replying affidavit sworn on 9th May 2017. The replying affidavit is further supported by numerous documents marked GWM1 and GWM2. At the hearing of the application, the parties through their advocates on record agreed to dispose of the said application by way of submissions. Counsel for the respondent filed these submissions and list of authorities on 16/5/2017 while counsel for applicant filed his on 30/7/2017 respectively.

APPLICANT'S SUBMISSIONS

According to the applicant, the respondent's suit in Mwingi. PMCC No.3 of 2015 involves a claim of land and that the magistrate's court lacks jurisdiction to hear and determine the same. He further stated that he entered appearance and filed defence and counter claim in which he pointed out that the magistrate's court lacked jurisdiction.

He thinks or so I believe that no party would suffer prejudice if the case was moved to court of competent jurisdiction to hear and determine the issues in question.

RESPONDENT'S CASE

The respondent in his part filed grounds of opposition and a replying affidavit opposing the applicant's application. In the grounds of opposition dated 9/5/2017 and filed on 10/5/2017. The respondent stated that the Environment and Land court has no jurisdiction to order withdrawal and transfer of a suit that is filed before a court without jurisdiction as the suit is incompetent and there is nothing to transfer. He also stated that he has already withdrawn the suit before the lower court that was incompetent and filed as another suit before the Environment and Land Court at Machakos and that the application has been overtaken by events. He attached a copy of Notice to withdraw suit No. 3 of 2015 (Mwingi) and copies of

the plaint filed before Environment and Land Court in Machakos being Case No. 213 of 2017 (Machakos).

I have carefully considered the documentary evidence and the submissions by counsel for the applicant and the rival submissions by counsel for the respondent.

The issue before me for determination in this application is whether the magistrate's court in Mwingi lack jurisdiction to hear and determine Land related issues. Particularly those being raised in PMCC No.3 of 2015 (Mwingi).

Section 9 of the Magistrate's Court's Act reads as follows;

"9 Claims in employment labour relations claims; land and environment cases.

A magistrate's court shall;

(a) In the exercise of the jurisdiction conferred upon it by Section 26 of the Environment and Land court Act (Cap 1.2A) and subject to the pecuniary limits under Section 7(1), hear and determine claims relating to;

(i) Environmental planning and protection, climate issues, land use planning, title tenure, boundaries rates lents valuations, mining, minerals and other natural resources.

(ii) Compulsory acquisition of land

(iii) Land administration and management

(iv) Public, private and community land and contracts, choses in a dim or any other instruments granting any enforceable interests in land and

(v) Environment and land generally.....

Article 162 (2) states as follows:

"Parliament shall establish courts with the status of the high court to hear and determine disputes relating to:

(b) The environment and the use and occupation of and title of land.

3. Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

4. The subordinate courts are the courts established under Article 169 or by parliament in accordance with that Article.

Following the decision of the court of Appeal in CA No 287 of 2016 (unreported) the court held as follows;

(a) The judgment and order of the high court declaring Section 2 of the statute law (Miscellaneous Amendments) Act 2015, Section 7 (3), 8(a) and 26 (3) and (4) of the ELC Act Sections 9(a) and (b) of the Magistrate's court Act 2015 as unconstitutional, null and void is hereby set aside.

(b) The order of certiorari issued by the High Court quashing Gazette Notice numbers 1472 dated 1st March 2016 published on 11th March 2016 and 1745 dated 14th March 2016 published on 18th March 2016 is hereby set aside.

In light of the above, it is apparent that the magistrate's court has jurisdiction to hear and determine

environment and land related disputes.

As such, the application before me lacks merit and the same is hereby dismissed with costs to the respondent.

Read and Signed in the open court this 24th day of October 2017.

E.C Cherono (Mr.)

ELC Judge

In the absence of the parties.