



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT GARISSA

MISCELLANEOUS APPL. NO. 14 OF 2017

LENA MBULI KILONZO.....APPLICANT

VERSUS

JOSHUA MWANDIKWA & 8 OTHERS...RESPONDENTS

RULING

The application before me is the Notice of Motion dated 6th June 2017 brought under Section 18 CPA, Article 162 (2) (b) of the Constitution of Kenya 2010. The applicant is seeking the following orders:

1. THAT the suit filed by the applicant against the respondents being Mwingi SRMCC No. 9 of 2011 between Lena Mbuli Kilonzo –vs- Joshua Mwandikwa & 8 others being SRMCC (Mwingi) be transferred to the ELC at Garissa for hearing and determination.
2. THAT an order for status quo to be maintained be issued pending hearing and determination of this application.
3. THAT an order for status quo be maintained be issued pending hearing and determination of the suit.
4. THAT costs of the application be provided for.

That application is supported by the affidavit of Peter Mbiti Kilonzo and grounds shown on the face of the said application. In his supporting affidavit the applicant avers that the suit in question relates to a land dispute which can only be heard by the environment and land court. He further contends that Mwingi law court is not an ELC court.

The said application is opposed with a replying affidavit sworn by Susan Nduni Makau in which she concurs that the senior magistrate's court in Mwingi has no jurisdiction to hear and determine the same and that the case be transferred to the ELC court in Garissa for hearing and determination.

The respondents do not seem to oppose the application in principle.

Having considered the affidavit evidence and the submissions by counsels appearing for both sides it is imperative to note that prior to the filing of this application the high court in Malindi. Constitutional Petition No 3 of 2016 comprising. ANYARA EMUKULE MUGURE THANDE AND CHITEMBWE JJ delivered a ruling on 11th November 2016 in which the court decreed that Section 2 of the statute law

(Miscellaneous Amendment) Act 2015 in relation to the jurisdiction of the subordinate courts, in respect of matters relating to environment and the use, occupation of and the title to land is inconsistent with Article 162 (2) of the Constitution and therefore null and void.

The respondents in that case were dissatisfied with the said ruling and appeared to the court of Appeal in Civil Appeal No. 287 of 2017 (unreported).

In their judgment delivered on 19th October 2017 the learned judges comprising P.N WAKI, R. N NAMBUYE, S. GATEMBU KAIRU D. K MUSINGA AND A. K MURGOR JJ held this:

“The result of the foregoing is that the appeal partially succeeds. We accordingly make the following orders:

(a) The judgment and order of the high court declaring Section 2 of the statute law (Miscellaneous Amendments) Act 2015 Section 7 (3) 8(d) and 26(3) and (4) of the ELC Act; Section 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 number 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,”

Following that decision by the superior court, it is now clear that the subordinate courts have jurisdiction to hear and determine matters relating to environment and use and occupation of and title to land.

Consequently, this application lacks merit and the same is hereby dismissed with each party to bear his own costs.

Read and Delivered in the open court this 24th October, 2017.

E.C Cheronno (Mr.)

ELC Judge

In the presence of

Mr. Munywoki for applicant.