



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 27 OF 2014**

**SUJO ILDHANI.....PLAINTIFF**

**VERSUS**

**BASHIR WATIYE GALKENA.....DEFENDANT**

**RULING**

1. The Notice of Motion dated 30<sup>th</sup> October 2014 seeks the following orders:-

1. Spent.
2. There be a stay of execution of the transfer orders herein dated 29/10/14.
3. The order herein dated 29/10/14 for transfer of this matter to the Principal Magistrate's Court at Marsabit be reviewed.
4. This matter be heard and determined before this Honourable Court.

2. The application is based on the following grounds:-

- (a) The damages for loss of business under paragraph 5 of the plaint will have exceeded the pecuniary jurisdiction of the Principal Magistrate's Court at Marsabit by 31<sup>st</sup> October, 2014 even without considering general damages for trespass.
- (b) The tort herein is continuing and unless we are heard before this Honourable Court we may be forced to apply for re-transfer to this Honourable Court come 1/11/14.
- (c) By 31/10/14 the claim for loss of business will be Kshs.4, 200,000 which exceeds the pecuniary jurisdiction of the Principal Magistrate's Court at Marsabit.
- (d) By the time of mentioning of the file at Marsabit on 27/11/14 the said court will be without jurisdiction to entertain the same.
- (e) There is an error apparent on the face of the record.
- (f) There are other substantial grounds to review the orders of 29/10/14.

3. The application is supported by the Affidavit of SUJO ILDHANI sworn on 30<sup>th</sup> October 2014, where he states that:-

- i. He is claiming for the loss of business to his Plot No. 93 which is built up at the rate of Kshs. 300,000 per month from 1/9/13 till removal of the defendant's fence on the disputed Plot Number 40A and which has not been removed to date.
- ii. By 31/10/14 that claim stands at Kshs. 4,200,000 which exceeds the pecuniary jurisdiction of the Principal Magistrate's Court at Marsabit which stands at Kshs. 4,000,000.
- iii. THAT there is an error apparent on the face of the record and sufficient grounds for review of the said order, as applicant is also claiming damages for trespass.
- iv. THAT pending inter parties hearing pray hereof I pray that the orders of 29/10/14 be stayed so that this file may not be sent to Marsabit Court in compliance therewith before we are so heard.

4. The Replying Affidavit by BASHIR WATIYE GALKENA sworn on 4<sup>th</sup> November 2014 states as follows:-

1. THAT he is the defendant in respect of the above civil case.
2. THAT subject matter is PLOT NO. 40A within Laisamis Market and the said plot is undeveloped.
3. THAT the value of plots at Laisamis is between Shs. 150,000/= to 200,000/= and obviously Marsabit Court has jurisdiction to hear and determine this suit.
4. THAT the alleged loss of business is speculative and not supported by any evidence.
5. THAT the plaintiff applicant is punishing him by bringing him all the way from Marsabit County to Meru while the Marsabit Court has jurisdiction to hear and determine this suit.
6. THAT there are no grounds to warrant a review of the order transferring the case to Marsabit.

I am unable to write a ruling on account of two factors.

The pecuniary jurisdiction of a Principal Magistrate stands at Ksh. 100, 00000. The Marsabit Court hence has jurisdiction to hear the matter.

I therefore decline to have the order of 29.10.14 reviewed. This file is to be sent to Marsabit Law Court forthwith for determination.

**DELIVERED, DATED AND SIGNED AT MERU THIS 24<sup>TH</sup> DAY OF OCTOBER, 2017 IN THE PRESENCE OF:-**

**CA: Janet**

**Hon. L.N.MBUGUA**

**ELC JUDGE**