



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
MISC. CASE NO. 115 OF 2017
BRENDAN KIMANI KAMANUAPPLICANT
VERSUS
ELIZABETH WANJIRU GICHEMI.....1STRESPONDENT
PAUL MWANGI GICHEMI 2NDRESPONDENT

RULING

(An application seeking transfer of a suit concerning title to land; suit filed in the Chief Magistrate's Court in the year 2014; application dismissed)

1. This is a ruling in respect of Notice of Motion dated 31st March 2017 wherein the applicant seeks an order that Nakuru CMCC No. 46 of 2014 Brendan Kimani Kamanu – vs – Gichemi Njuguna & 2 others be transferred to this court. The application is brought under sections 1A, 1B, 3A and 18 (1) (b) (i) of the Civil Procedure Act.
2. The application is supported by the affidavit of Beatrice Njeri Njagua, advocate for the applicant. She deposes that the suit sought to be transferred was filed in the Chief Magistrates Court at Nakuru on 23rd January 2014. Though no formal response was filed by the respondents, counsel for the respondents told the court that the respondents do not oppose the application.
3. I have perused the supporting affidavit and the annexures thereto. I note that in the suit the plaintiff seeks a declaration that she is the legitimate owner of all those parcels of land known as title No. Bahati/Kabatini Block 1/11742, Bahati/Kabatini Block 1/11743, Bahati/Kabatini Block 1/11744, Bahati/KabatiniBlock1/11745, Bahati/KabatiniBlock1/11746, Bahati/KabatiniBlock1/11747, Bahati/KabatiniBlock1/11748, Bahati/KabatiniBlock1/11749, Bahati/KabatiniBlock1/11750, Bahati/Kabatini Block 1/11751, Bahati/Kabatini Block 1/11752 and Bahati/Kabatini Block 1/11753. The suit therefore concerns title to the aforesaid parcels of land.
4. Pursuant to the provisions of Articles 162 (2) (b), parliament enacted the Environment and Land Court Act No.19 of 2011. The Act came into force on 30th August 2011. Section 13 (1) of the Act confers jurisdiction to determine all disputes concerning the environment and use, occupation of and title to land on this court.
5. Parliament also enacted the Land Registration Act No. 3 of 2012 and the Land Act No. 6 of 2012 both of which came into operation on 2nd May 2012. Both Acts define “Court” to mean the Environment and Land Court established under the Environment and Land Act No. 19 of 2011. Thus as at 23rd January 2014 when Nakuru CMCC No. 46 of 2014 Brendan Kimani Kamanu – vs – Gichemi Njuguna & 2 others

was filed, Section 101 of the Land Registration Act stated:

The Environment and Land Court established by the Environment Court Act, 2011 (No. 19 of 2011) has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act

Similarly, as at the year 2014, Section 150 of the Land Act provided:

The Environment and Land Court established in the Environment and Land Court Act is vested with exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.

6. It is clear from the foregoing that the subordinate courts did not have jurisdiction in matters concerning title to, use and occupation of land as at the year 2014 when the suit sought to be transferred was filed in the Chief Magistrate's Court at Nakuru.

7. It is settled law that a suit filed in a court without jurisdiction cannot be transferred and that there is no jurisdiction to transfer such a suit. In **Charles Omwata Omwoyo v African Highlands & Produce Co Ltd [2002] eKLR** Ringera J stated as follows:

In KAGENYI V MISIRAMO & ANOTHER [1968] E.A. 48, Sir Udoma Udoma C.J. held in relation to Section 18 of the Uganda Civil Procedure Act - a provision which is in parimateria with section 18 of our code- that an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first place brought to a court which has jurisdiction to try it..... And in the very early case of MENDONCA V RODRIGUES [1906-1908] 2KLR 51, Hamilton J. held that the High Court do not have power to order a transfer of the suit on the ground of want of jurisdiction only. The principle of law to be gleaned from those authorities is that the High Court cannot exercise its discretion to transfer a suit from one court to another if the suit is filed in the first place in a court which does not have the pecuniary and/or territorial jurisdiction to try it. That is the case here.....

The plaintiff's advocate has made a passionate plea to this court that to dismiss the application would be tantamount to punishing the plaintiff for the mistake of his advocate. That may very well be so. However, I am of the opinion that if a court has no jurisdiction to do something it cannot do so in what is said to be the interests of justice. The interests of justice are forever best served by upholding the law and not bending it to suit the individual circumstances of cases before the court.

8. Nakuru CMCC No. 46 of 2014 Brendan Kimani Kamanu – vs – Gichemi Njuguna & 2 others having been admittedly filed in a court without jurisdiction, this court lacks jurisdiction to order its transfer to this court or to any other court. Parties cannot confer jurisdiction on the court even if they consent to do so. In the circumstances, Notice of Motion dated 31st March 2017 is dismissed. No order on costs.

Dated, signed and delivered in open court at Nakuru this 12th day of October 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Ms. Chepngetich holding brief for Ms. Njeri Njagua for the plaintiff/applicant

Mr. Kibet for the defendants/respondents

Court Assistant: Gichaba