



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU

MISC. CASE No. 95 OF 2016

ROSE KAMENE CHARLES..... PLAINTIFF

VERSUS

HILLARY KIPLANGAT.....1ST DEFENDANT

DAVID CHERUTICH2ND DEFENDANT

RULING

(An application seeking transfer of a suit filed in chief magistrate's court in May 2012; application allowed)

1. This ruling is in respect of Notice of Motion dated 9th March 2016. The application is brought under Order 51 rule 1 of the Civil Procedure Rules and Sections 1A, 1B, 3A and 18 (1) (b) (i) of the Civil Procedure Act. The applicant seeks an order that Nakuru CMCC No. 528 of 2012 Rose Kamene Charles –vs- Hillary Kiplangat and David Cherutich be transferred to this court for hearing and determination.
2. The application is supported by the affidavit of the applicant filed on 10th March 2016, applicant's Supplementary Affidavit filed on 10th May 2016 and applicant's Further Supplementary Affidavit filed on 28th July 2017. The applicant contends that her aforesaid case was filed in the Chief Magistrates' Court at Nakuru on 11th May 2012. In the case, the applicant seeks an eviction order to remove the respondents and all illegal structures erected by them from the parcel of land known as Nakuru/Ngongongeri/109.
3. Though the 2nd respondent filed a replying affidavit on his own behalf and on behalf of the 1st respondent on 11th April 2016 in which he opposed the application, when the application, when the application came up for inter parte hearing on 5th October 2017, counsel appearing for the respondents urged the court to allow the application.
4. I have considered the application. From the copy of the plaint annexed, it is not possible to see any court filing date stamp. The plaint is dated 7th May 2012 and according the applicant, it was filed on 11th May 2012. This court was established pursuant to the provisions of Article 162(2) (b) of the constitution and section 4 of the Environment and Land Court Act, 2011.
5. Pursuant to section 13 (1) of the said Act, the court has jurisdiction to determine all disputes concerning the environment and use, occupation of and title to land. Though the Act came into operation on 30th August, 2011 it was not until 3rd October 2012 when the pioneer judges of the court were appointed and gazetted. The court commenced operations on 5th November 2012 when the pioneer judges

were sworn into office and posted to various stations across the country.

6. To ensure seamless progress of matters that were pending in court as at the effective date of the Constitution of Kenya 2010, section 22 of the Sixth Schedule of the constitution provides as follows:

All judicial proceedings pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under this Constitution or as directed by the Chief Justice or the Registrar of the High Court.

7. Similarly, section 30(1) of the Environment and Land Court Act, 2011 provides:

All proceedings relating to the environment or to the use and occupation and title to land pending before any Court or local tribunal of competent jurisdiction shall continue to be heard and determined by the same court until the Environment and Land Court established under this Act comes into operation or as may be directed by the Chief Justice or the Chief Registrar.

8. Pursuant to the provisions of section 30(1) of the Environment and Land Court Act, 2011 the Chief Justice issued Practice Directions dated 9th November 2012 vide Gazette Notice No. 16268 of 2012, which were subsequently superseded by Practice Directions dated 25th July, 2014 issued vide Gazette Notice No. 5178 of 2014. Paragraph 8 of the latter Practice directions is in the following terms:

Magistrates Courts shall continue to hear and determine all cases relating to the environment and the use and occupation of, and title to land (whether pending or new) in which the courts have the requisite pecuniary jurisdiction. All proceedings which were pending before the Magistrates Court, having been transferred thereto from the now defunct District Land Disputes Tribunals, shall continue to heard and determined by the same courts.

The Practice directions remain in force.

9. It is manifest that as at 11th May 2012 which was the date of filing of the suit that was sought to be transferred, this court had not been operationalized. In such circumstances, it was perfectly in order for the applicant to file the suit in the Chief Magistrate's Court. The court had and still has jurisdiction. It can and ordinarily should continue hearing the matter to conclusion. Nevertheless, since I have discretion to order transfer of the matter to this court and since the respondents have not opposed the application, I hereby order that Nakuru CMCC No. 528 of 2012 Rose Kamene Charles –vs- Hillary Kiplagat and David Cherutich be transferred to this court for hearing and determination. Costs in the cause.

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

D. O. OHUNGO

JUDGE

In the presence of:

Mrs. Mbeche for the plaintiff/applicant

Mrs. Omwenyo for the defendants/respondents

Court Assistant: Gichaba