



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC MISC. APPLICATION NO.2 OF 2017

SAMUEL MWAURA..... PLAINTIFF

VERSUS

CHARLES MASINDE..... DEFENDANT

R U L I N G

1. The applicant brought an application dated **24/2/2017** seeking the following orders:-

(a) That this Honourable Court do transfer Kitale CMCC No.2 of 2015 from the Chief Magistrates Court, at Kitale to Environment and Land Court at Kitale for disposal and final determination.

(b) That the costs of this application be in the main cause.

2. The application is made on the grounds that the issue of jurisdiction of the Chief Magistrates Court to try land matters is pending before the Court of Appeal, and that this court now has jurisdiction to determine this matter.

3. In summary, what the applicant states in application and supporting affidavit is that the suit has been transferred three times, first, from the High Court to the Chief Magistrate's Court, secondly from the Chief Magistrate's Court back to the High Court and thirdly, from the High Court back to the Chief Magistrate's Court. The first transfer occurred in 2013. The second and third transfers were by way of a consent and they occurred in the year 2014.

4. It is claimed that the defendant will not be prejudiced in any way if the orders sought are granted. If effected by way of an order of this court, the transfer sought would be the fourth transfer. There is no allegation made to the effect that the Chief Magistrate's Court has no jurisdiction to try this matter. The only allegation I find is that the issue of the jurisdiction of the Chief Magistrate's Court to try this matter is still pending before the Court of Appeal. Though it is true that this court has jurisdiction to transfer a suit from another court to itself that order cannot be made unless the suit had been in the first place brought to a court which has jurisdiction to try it.

5. If the court before which this suit had been initially brought had jurisdiction, it is not necessary to transfer this matter to this court. If it had jurisdiction and same litigation directly affecting its jurisdiction was commenced and it has not been brought to a final conclusion, then that court is still deemed to have jurisdiction. The mere pendency of that litigation before another court should not automatically prompt a transfer application of this nature. I also conclude by stating that it may be the constant movement of that suit from one court to the other that may have delayed its conclusion.

6. Consequently, I find the application dated 27/9/2017 to have no merit and I dismiss it with no orders as to costs.

Dated, signed and delivered at Kitale on this **9th** day of **October, 2017**.

MWANGI NJOROGE

JUDGE

9/10/2017

Before – Mwangi Njoroge Judge

Court Assistant – Isabellah/Picoty

Mr. Waweru holding brief for Gachathi for Plaintiff

N/A for the Defendant

COURT

Ruling read in open court in the presence of counsel for the Plaintiff.

MWANGI NJOROGE

JUDGE

9/10/2017