

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA IN BUSIA

LAND & ENVIRONMENTAL DIVISION

MISC. APPLICATION NO. 137 OF 2016

JARED MUKHWANA CHIMAU.....APPLICANT

VERSUS

BENSON WYCLIFFE WANZALA.....RESPONDENT

R U L I N G

1. The application before me is a Notice of Motion dated 9/11/2016 filed here on the same date by the Applicant – **JARED MUKHWANA CHIMAU**. It seeks, *inter alia*, transfer to this court of case No. **BUSIA CMCC No. 416 of 2012** for hearing and determination. The application is brought under Order 51 Rule 1, 3, 4, 8, 10(1) and Sections 3, 3A and 63(e) of Civil Procedure Rules and Civil Procedure Act (cap 21) respectively. It was brought against the Respondent – **BENSON WYCLIFFE WANZALA**.

2. In the lower court, the dispute is said to revolve around two parcels of land: **BUKHAYO/LUPIDA/1760** and **BUKHAYO/LUPIDA/1818**. The value of the two parcels of land is said to exceed what the lower court can handle. But I need to point out that though the application mentions two parcels of land as the subject of the dispute, the plaint availed only mentions land parcel No. **BUKHAYO/LUPIDA/1760**. It is not clear where the Applicant got the other parcel: **BUKHAYO/LUPIDA/1818**. I appreciate however that the parcels could possibly be mentioned in pleadings of that case that were not availed here.

3. The Respondent responded to the application vide grounds of opposition dated 7/6/2017 and filed on 8/6/2017. He averred that the suit is properly before the lower court; that there is no evidence to show that the value of the land is beyond the monetary jurisdiction of the lower court; and that no basis is laid for transfer of the case to this court.

4. The application was canvassed by way of written submissions. The Applicant submissions were filed on 17/10/2017. The Applicant asked the court to be allowed to withdraw his application with no penalty as to costs.

5. The Respondent on the other hand submitted that the Applicant application should be dismissed with costs.

6. I have considered the application, response made, and rival submissions. I wish not to dwell much on the merits of what each side said. And this is because the Applicant has proposed to withdraw the application. The Applicant however feels that he should not be made to pay costs. I agree with the Applicant on the issue of withdrawal but disagree with him on the issue of costs. The Respondent's side has already responded to the application and has incurred costs. It is the Applicant who dragged the Respondent here. He should not therefore be excused on the issue of costs.

7. The Applicant is therefore allowed to withdraw his application. He should however pay the incurred costs of the application to the Respondent.

Dated, signed and delivered at Busia this 29th day of November, 2017.

A. K. KANIARU

JUDGE

In the Presence of:

Applicant:

Respondent:

Counsel of Applicant:

Counsel of Respondent: