



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELCA NO. 1 OF 2017

(Formerly NAIROBI ELCA NO. 99 OF 2015)

EPHRAIM KARIUKI WAMBURU.....APPELLANT

-VERSUS-

COMMISSIONER OF LANDS.....RESPONDENT

RULING

1. This is an application by Notice of Motion dated **12th November, 2012**. The applicant seeks orders;

(i) That the above captioned appeal, being an order which was unduly transferred from the NAIROBI ELC to the Nyeri ELC recently, be transferred back for hearing and disposal, the NAIROBI ELC court which was seised of the matter from 2015, being competent and efficacious in its hearing and determination.

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

2. The application is premised on the grounds that the appeal was transferred irregularly to Nyeri Environment and Land Court under unclear circumstances; that there was no application of transfer by any of the parties and the court did not consult the parties before ordering the transfer.

3. It is the applicant's contention that the appellant, respondents and interested parties are all based in Nairobi and this matter will be expedited faster if heard by the Nairobi Environment and Land Court.

4. In the affidavit sworn by **Ephraim K. Wambugu**, the appellant herein, he depones that he is one of the registered owners of LR No. Aguthi/Gatitu/3447 (Wambugu Farm); That the Commissioner of Lands, Interested in acquiring the above parcel of land offered compensation for the land which amount was not acceptable to the appellant; that the appellant has now appealed the offer of compensation in Nairobi; that it is only fair that the appeal be transferred back to Nairobi Environment and Land Court to save the appellant and other parties time, money and effort as they are all based in Nairobi.

5. The application is not opposed.

6. The law on transfer of suits is found in **Section 18** of the Civil Procedure Act which provides:

"1. On the application of any of the parties and after notice to the parties and after hearing

such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage-

(a) Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(b) Withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter-

(i) Try or dispose of the same; or

(ii) Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(iii) Retransfer the same for trial or disposal to the court from which it was withdrawn.

2. Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, wither retry it or proceed from the point at which it was transferred of withdrawn.”

7. This appeal was first filed in the High Court Nairobi Civil registry. Following the Practise directions gazetted on 25th July, 2014 vide Gazette notice No. 5178 by the Hon Chief Justice on jurisdiction of courts, most of the Environment and Land matters pending before the High Court were transferred to the Environment and Land Courts in accordance with **Paragraph 5** of the aforesaid directions which provides;

“All cases relating to environment and the use and occupation of, and title to land which have hitherto been filed at the High Court and where hearing in relation thereto are yet to commence shall be transferred to the Environment and land Court as directed by a judge.”

8. Although the above practice directions are not cited in the applicant’s application (MISC. ELC No. 262 of 2015), for transfer of the appeal from the High Court to Environment and Land Court division Nairobi, the Hon Judge who transferred the appeal must have considered these practice directions together with other enabling statutes before transferring the file to Environment and Land Court Nairobi.

9. These practice directions also addressed the filing of new cases. **Paragraph 14** of the practice directions provides:

“All new cases relating to the environment and the use and occupation of, and title to land not falling under paragraph 8 above shall be filed in the nearest Environment and Land Court for hearing and determination by the said court and must be within the purview of the jurisdiction conferred upon the Environment and Land Court with particular regard to the jurisdictional limitations set under Article 162(2)(b) of the Constitution and Section 13 of the Environment and Land Court Act No. 19, 1022.”

10. **Paragraph 15** of the aforesaid directions read with paragraph 2 of the practice directions relating to the filing of suits, application and references in Proper Court (Gazette Notice No. 1756/2009), outline the procedure to be followed once a case has been filed in the wrong registry. **Paragraph 15** states:

“Where a matter has been wrongly filed at the Environment and Land Court Registry, the practice directions notably:- Practice Directions Relating to the Filing of Suits, Application and References in Proper Court (Gazette Notice No. 1756/2009) shall apply and the matter shall be directed for filing in the appropriate court(s) in tandem with those practice directions.

11. Paragraph 2 in the Practice Directions relating to the filing of suits, applications and references in proper courts (Gazette notice No. 1756/2009) states as follows;

“Where suits have already been filed in the wrong court, the Court should exercise its authority under Order VII Rule 9 of the Civil

Procedure Rules to return the plaint to be presented to the court in which the suit should have been instituted, without prejudice to any other powers that it may possess under the law to strike out the pleadings as an abuse of the process of the Court.”

12. From the above directions, any suit relating to Land in Nyeri, Karatina, Othaya, Mukurweini and Nanyuki should be filed in Nyeri Environment and Land Court registry and if wrongly filed in another registry the file should be transferred to the correct registry.

13. Having found that the Environment and Land Court, Nairobi had jurisdiction to transfer this appeal to Environment and Land Court Nyeri *Suo moto* and considering that filing of suits is done in accordance with the law and not according to the preference or convenience of parties, I find the application unmerited and I dismiss it with no order on costs as the same was undefended.

Dated, signed and delivered at Nyeri this 20th day of November, 2017.

L N WAITHAKA

JUDGE

Coram:

N/A for the applicant

N/A for the respondent

Court assistant - Esther