

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C MISC. APP. NO. 17 OF 2017

DAVID KARANJA GAIKHO - PLAINTIFF/APPLICANT

VS

PETER NJOROGE MWANGI - 1ST DEFENDANT/RESPONDENT

MARY WANJIRU MWANGI - 2ND DEFENDANT/RESPONDENT

RULING

1. The application is brought under Section 18 of the Civil Procedure Act, Order 51 Rule 1 of the CPR, and Section 13 of the Environment and Land Court Rules. The Applicant seeks to transfer **CMCC No. 372 of 2015** from the Chief Magistrate's Court Murang'a to the Environment and Land Court in Murang'a. The Applicant anchored this application on the Constitutional **Petition No 3 of 2016** at Malindi which removed the jurisdiction in respect to matters relating to Environment Land use occupation of and title to land from the Magistrate Court.

2. It is supported by the Affidavit of Joseph Githinji Kariuki Advocate who has deponed that pursuant to the High Court Order dated 17th September 2015 by the Honourable Justice Boas Olao, the suit was transferred from ELC Kerugoya to the Subordinate Court at Murang'a in line with the pecuniary jurisdiction of the Chief Magistrate Court at Murang'a. It has now become necessary, following the Judgement and determination of the Constitutional **Petition No 3 of 2016 – Malindi Law society =vs= Attorney General & 4 Others** to transfer this matter back to the Environment and Land Court in Murang'a for hearing and determination.

3. The **Court of Appeal in Civil Appeal No. 287 of 2016 The Law Society of Kenya Nairobi Branch vs. Malindi Law Society & 6 Others** decided that Magistrates have jurisdiction to hear and determine matters in respect to environment, land use, occupation of and title to land, subject to their pecuniary jurisdiction. This being a land matter, and the subordinate Court having being bestowed with the jurisdiction to hear the matter I order that this application be dismissed forthwith with no orders as to costs.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 9TH DAY OF NOVEMBER, 2017.

J.G.KEMEI

JUDGE