



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

ENVIRONMENT AND LAND COURT

ELC MISC CASE NO. 5 OF 2017

CHACHA MTUNDI BARNABAS.....PLAINTIFF

-versus-

THE COUNTY GOVERNMENT OF MIGORI.....DEFENDANT

RULING

1. The Applicant, **CHACHA MTUNDI BARNABAS** filed a Notice of Motion (the application) dated **17th February 2017**, against the **COUNTY GOVERNMENT OF MIGORI** (the Respondent), pursuant to Section 3, 3A, Section 17 of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules Cap 21 Laws of Kenya and all enabling provisions of the law. He is seeking the following orders :-

1. THAT this Honourable court be please transfer the land suit before the Chief Magistrate's Court Migori Land case No. 396 of 2016 to the Environment Land Court at Migori.

2. THAT the costs of this application be provided for.

2. The application is supported by a supporting affidavit sworn on 17th February 2017. The applicant has raised (2) two grounds upon which the application is based they are :-

i. THAT the suit before Honorable Magistrate Migori is a land matter, and as such that Honourable court does not have jurisdiction to hear and determine the matter.

ii. It is in the interest of justice that this application be allowed.

3. The Applicant was initially represented by Nyauke Advocate. However he filed a Notice of Motion of intention to act in person dated 4th October 2017. Omonde Kisera Advocate, is for the Respondent and he was served with the application on 1st March 2017.

4. Mr. Muniko counsel holding brief for Kisera for the Respondent has asked for dismissal of the application. The suit property is land parcel **No. NYABASI/BUSONGA/251** and its existence is fortified by certificate of Official Search dated 16/7/2013. Therefore is it necessary to transfer Migori CMCC No. 396/2016 to this court?

5. I consider the application in its entirety. The case is pending before the CM's court Migori. This court is guided by the **Civil Procedure Act Cap 21**. It has powers to transfer it pursuant to **Article 162 (2)**

Constitution of Kenya, 2010 and Further to Section 18 Civil Procedure Act (Cap 21 Laws of Kenya) provides :-

“18.(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) Retransfer the same for trial or disposal to the court from which it was withdrawn. (Emphasis added)”

6. Recently the court of Appeal in **Civil appeal No. 287 of 2016** the Law of Kenya **Nairobi branch** and **Malindi Law Society** and 5 others consolidated with Civil **appeal No. 3 of 2017**; **The Attorney Vs. General and Malindi Law Society** and 4 others held that Magistrates courts were conferred with jurisdiction to handle ELC matters. The court observed thus:

“ In our view, conferring jurisdiction on magistrates’ courts to hear and determine does not diminish the specialization of the specialized courts (ELRC and ELC) considering that appeals from the Magistrates courts over those matters lie with the specialized courts.”

7. In view of the above provisions and observation, I find that currently the Magistrates’ courts have jurisdiction to handle ELC matters. Since the case is pending at CM’s court, Migori, it would not be necessary and not in the interest of justice to transfer it to this court for hearing and determination.

8. I accordingly dismiss the application dated 19/2/2017 by Applicant.

9. Each party to bear its own costs.

DELIVERED, DATED and SIGNED at MIGORI this 6th day of November 2017.

G. ONGONDO

JUDGE

In presence of :-

Mr. Muniko holding brief for Omonde Kisera for the Defendant

Tom Maurice – Court Assistant.