



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L MISC. APPLICATION NO. 15 OF 2015

VERONICAH R. CHERONO.....PLAINTIFF

VERSUS

JOSEPH RUTO CHERONO.....DEFENDANT

RULING

Veronicah R. Cheron (*hereinafter referred to as the applicant*) has come to this court against **Joseph Ruto Cheron** (*hereinafter referred to as the respondent*) in the application dated 5.6.2015 for orders that their Principal Magistrate's Court Case No. 10 of 2014 between Veronica Cheron and Joseph Ruto Cheron be transferred to the Environment and Land Court, Eldoret for hearing and determination of the suit.

The application is based on grounds that the parties have agreed by consent to have the matter transferred to the Environment and Land Court, Eldoret for hearing and determination of the suit and there exist the issues over jurisdiction of the Magistrate's Court due to the Chief Justice's direction and provision of the constitution. That it would be wise to have the matter heard and disposed off in the Environment and Land Court, Eldoret and that the for purposes of mitigating all relevant facts, the same be transferred to the Environment and Land Court, Eldoret.

The application is supported by the affidavit of Michael K. Chemwok who states that upon receiving instructions, they did file for orders of eviction on of the defendant herein and upon the defendant filing his defence, an issue of jurisdiction arose. That they do have in their possession the Chief Justice's directions on the filing of such matters and in this matter, the defence counsel has raised issues of law relating to the Constitution of Kenya, 2010 and land matters and therefore, for purposes of the two parties to have their matter arbitrated, they as the counsels have agreed to have this matter transferred to the Environment and Land by consent. According to the applicant, the Lower Court cannot on its own transfer a matter to the Higher Court. That it is for this reason that they submit that the matter be transferred to the Environment and Land Court, Eldoret.

The application is opposed by the respondent who argue that the applicant's advocate knew that the Lower Court had no jurisdiction over land matters and that a matter filed in a court without jurisdiction is not transferable and that the application is made in bad faith hence should be dismissed with costs.

The applicant submits that the application is filed to cure want of jurisdiction of the Lower Court hence he admits that the Lower Courts (Magistrates' Court) have no jurisdiction to entertain matters touching on Environment and Land Court therefore, seeks to transfer the matter from the Magistrate's Court to the Environment and Land Court. The applicant relies on Article 159 of the Constitution of Kenya and under sections 1A, 1B and 3A of the Civil Procedure Act.

It is correctly admitted by the counsel for the applicant that the Magistrate's Courts have no jurisdiction to entertain Environment and Land matters. Article 162(1) of the Constitution of Kenya, 2010 provides that the superior courts are the Supreme Court, the Court of Appeal and the High Court and the courts referred to in clause (2). Article 162(2)(b) provides that Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to the Environment and the use and occupation of, and title to land. Parliament was to determine the jurisdiction and functions of the courts contemplated under clause (2). The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.

Article 169(1) of the Constitution provides for subordinate courts as:

- “169. (1) The subordinate courts are-**
- (a) the Magistrates courts;**
 - (b) the Kadhis' courts;**
 - (c) the Courts Martial; and**
 - (d) any other court of local tribunal as may be established by an Act of Parliament, other than the courts established as required by Article 162(2).**
- (2) Parliament shall enact legislation conferring jurisdiction functions and powers on the courts established under clause (1).”**

As can be discerned above, Article 169(2) of the Constitution gives power to Parliament to enact legislation conferring jurisdiction, functions and powers on the courts established under clause (1). The proper construction of this Articles is that Parliament under Article 162(2) b can only enact legislation establishing superior courts with the status of the High Court to hear and determine disputes relating to environment and the use and occupation of, and title to land and determine the jurisdiction and functions of the courts contemplated in clause 2 while under Article 169 (2) Parliament has the duty to enact legislation conferring jurisdiction to the Magistrates courts established under clause 1.

In compliance with Article 162(2)b, Parliament enacted the Environment and Land Court Act No. 12 of 2012 which established the Environment and Land Court and conferred jurisdiction upon it.

This court finds that a suit relating to environment and the use and occupation of, and title to land filed in the Lower Court after the establishment of the Environment and Land Court was filed in breach of Article 162(2)b of the Constitution as there was no enabling legislation giving any person the authority to file the same in the Magistrate's Court. This court has no power to transfer a suit from the Magistrate's Court to the Environment and Land Court which suit was filed in contravention of the Constitution and the Environment and Land Court Act.

I do make this decision knowing that section 26 of the Environment and Land Court Act has been amended and that this application was filed and argued before the said amendment and the enactment of the Magistrate's Court Act, 2015 which now provides in section 9 as follows;

9. A magistrate's court shall — (a) in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act and subject to the pecuniary limits under section 7(1), hear and determine claims relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (ii) compulsory acquisition of land; (iii) land administration and management; (iv) public, private and community land and contracts, chores in action or other instruments granting any enforceable interests in land; and (v) environment and land generally.

Section 25 of the said Magistrates Court Act 2015 provides that Section 26 of the Environment and Land Court Act is amended by inserting the following subsections immediately after subsection (2)-

(3) The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving environment and land matters of any area of the country.

Magistrates' Courts

(4) Appeals on matters from the designated magistrate's courts shall lie with the Environment and Land Court.

The upshot of the above is that though the law has been amended to give the Magistrates courts jurisdiction to entertain matters relating to land and environment this application was filed and argued before the enactment and therefore the new laws, for their worth, are not subject of determination in this application and in any event the applicant may benefit from the new laws. the application is not allowed. Costs to the respondent.

DATED AND DELIVERED AT ELDORET THIS 29TH DAY OF JANUARY, 2016.

ANTONY OMBWAYO

JUDGE