



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**  
**ELC CASE NO. 85 OF 2015**

**PETER MBURU.....PLAINTIFF**

**VERSUS**

**ANDREW KIMANI ADAM.....1<sup>ST</sup> DEFENDANT**

**JAMES GACII KIMANI.....2<sup>ND</sup> DEFENDANT**

**MANAGER MWEA IRRIGATION SCHEME.....3<sup>RD</sup> DEFENDANT**

**RULING**

This is in respect to the application by the 3<sup>rd</sup> defendant/applicant dated 20<sup>th</sup> August 2015 seeking the transfer of this suit to the Wanguru Principal Magistrate’s Court for hearing and final disposal. The application is based on the grounds that the Wanguru Principal Magistrate’s Court has jurisdiction to hear and determine this suit and all the parties reside and work within the jurisdiction of that Court where the cause of action arose. The same is supported by the affidavit of Mr. OKERO GILBERT OMBACHI advocate for the 3<sup>rd</sup> defendant/applicant in which he has deponed that the Principal Magistrate’s Court at Wanguru has the requisite jurisdiction to handle this dispute.

The application is opposed and in his replying affidavit, the plaintiff/respondent has deponed, inter alia, that he was advised by the Chairman Business Rent Tribunal Embu to file this suit at this Court and that this application is simply a delaying tactic to delay this case since the 3<sup>rd</sup> defendant/applicant fears that its illegal action in transferring rice tenants cards without the consent transfer of the rightful tenants will be exposed at this Court rather than at the Wanguru Court.

Submissions have been filed by the firm of Muthii Murigu advocate for the plaintiff/respondent and G.O. Ombachi advocate for the defendant/applicant.

I have considered the application, the rival affidavits and the submissions by counsel.

I have also looked at the pleadings in this case which is essential in understanding whether or not this suit can be transferred to the Principal Magistrate’s Court at Wanguru.

From the plaint filed herein on 22<sup>nd</sup> July 2015 the plaintiff/respondent seeks the following orders against the defendants/applicants:-

- a. ***A permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> defendants by themselves, their agents, legal representatives or anybody else claiming under them from transferring, alienating, cultivating,***

**disposing or in any way whatsoever interfering with rice holding No. MWEA/TEBERE/T21/435A.**

- b. **Cancellation of license and tenant cards issued to the 1<sup>st</sup> and 2<sup>nd</sup> defendants by the 3<sup>rd</sup> defendant and the 3<sup>rd</sup> defendant be and (sic) hereby ordered to rectify the records in his (sic) offices to revert back to the plaintiff and issue him with original licence and card of rice holding No. MWEA/TEBERE/T21/435A.**
- c. **Cost of this suit.**

The basis of the plaintiff/respondent's claim is that whereas he was at all material time the registered tenant of rice holding No. MWEA/TEBERE/T21/43A (the rice holding) measuring 2 ½ acres or thereabout, the 1<sup>st</sup> defendant duped him into transferring 1 ½ acres by promising him Ksh.400,000. Thereafter, the 2<sup>nd</sup> defendant who is son to the 1<sup>st</sup> defendant colluded and transferred the remaining 1 acre. The 3<sup>rd</sup> defendant/applicant, in total disregard of the rules governing the transfer and surrender of tenant cards, allowed the fraudulent transfer and changed the records in their offices and issued tenant cards to the 1<sup>st</sup> and 2<sup>nd</sup> defendants thus dispossessing the plaintiff of his rice holding and rendering him destitute. The plaintiff therefore filed a case at the Embu Business Premises Rent Tribunal which advised him to file this suit.

In their defences, the 1<sup>st</sup> and 2<sup>nd</sup> defendants pleaded that the plaintiff lawfully sold to them the rice holding. The agreement of sale was annexed to the defence.

On its part, the 3<sup>rd</sup> defendant/applicant denied in its defence that it allowed any fraudulent transaction adding that all that it did with regard to the rice holding was in line with its rules and regulations under the **Irrigation Act**. It also pleaded that the Principal Magistrate's Court at Wanguru has the jurisdiction to handle this suit.

It is clear from the pleadings herein that the subject matter to be determined at the trial will be whether infact the 1<sup>st</sup> & 2<sup>nd</sup> defendants duped the plaintiff/respondent into transferring the rice holding to them and whether the 3<sup>rd</sup> defendant/applicant fraudulently allowed that transfer. According to the plaint, the consideration for that transfer was to be Ksh. 400,000 although the sale agreement annexed to the 1<sup>st</sup> and 2<sup>nd</sup> defendants defence indicate that the consideration was Ksh. 250,000. Whether the consideration was Ksh. 400,000 or Ksh. 250,000, it is clear that the Principal Magistrate's Court at Wanguru which is infact presided over by a magistrate of the rank of Principal Magistrate (Mr. P. Kiama) has the requisite pecuniary jurisdiction to handle this dispute as the pecuniary jurisdiction of a Principal Magistrate has now been enhanced to Kenya Shillings ten million following the recent amendment to **Section 7 of the Magistrate's Court Act**. **Section 11 of the Civil Procedure Code** also provides as follows:-

***“Every suit shall be instituted in the Court of the lowest grade competent to try it, except that where there are more subordinate Courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any of such subordinate Court Provided that:***

- i. ***If a suit is instituted in a Court other than a Court of the lowest grade competent to try it, the magistrate holding such Court shall return the plaint for presentation in the Court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his Court, and***
- ii. ***nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate Court in the same district”***

It is also clear from **Section 18 of the Civil Procedure Act** that the High Court has wide powers to transfer any suit pending before it to a subordinate Court competent to try it or transfer any suit from a subordinate Court to itself or transfer any suit from one subordinate Court to another. **Section 12 of the Civil Procedure Act** also provides that a suit for recovery of immovable property ***“shall be instituted in***

***the Court within the local limits of whose jurisdiction the property is situated”.***

Considering all the above, it is clear to this Court that this suit is suitable for transfer to the Principal Magistrate’s Court at Wanguru. That Court has the pecuniary jurisdiction to determine the dispute and there is nothing to suggest that there is an issue of law or other good or sufficient reason that would militate against this suit being heard at that Court. That is not to say that this Court has no jurisdiction over this matter. It does, but in view of what I have stated above including the fact that from the addresses of the parties as indicated in the agreement, they reside at Wanguru, it would be more economical and expeditious to have this suit determined at the Court nearest to them. It is noted that this suit has not even been confirmed as ready for trial and the earliest it is transferred to the Principal Magistrate’s Court at Wanguru, the more convenient it will be for the parties. Looking at the pleadings also, it is also worthy of note that both advocates are based at Wanguru and in the circumstances there could be no better case to transfer to that Court than this one.

This Court is aware that following the enactment of the **Environment and Land Court Act** which established the **Environment and Land Court**, both litigants and their counsels have been of the view that only the Environment and Land Court had the jurisdiction to determine cases involving land. I have

always held the view that the enactment of the **Environment and Land Act** did not take away the jurisdiction of subordinate Courts to handle land disputes where the value of the subject matter falls within those Court’s pecuniary jurisdiction. This is because, **Section 13 (1) of the Environment and Land Court Act** which provides for the jurisdiction of the **Environment and Land Court** states as follows:-

***“The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution and with the provisions of this Act or any other law relating to environment and land”*** emphasis added

If therefore the **Environment and Land Court** exercises appellate jurisdiction, it can only do so by hearing appeals from the subordinate Courts or other Tribunals. Parliament could not therefore have intended to take away the jurisdiction that magistrates have all along exercised in land cases where applicable. It is in that regard therefore that Parliament recently through Statute law (**Miscellaneous Amendments) Act No. 25 of 2015**, amended **Section 150, of the Land Act 2012** which previously read as follows:-

***“The Environment and Land Court established in the Environment and Land Court Act is vested with exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act”***

Following the amendment, that section now reads as follows:-

***“The Environment and Land Court established in the Environment and Land Court Act and the subordinate Courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act”***

That amendment also inserted in a new sub **Section 3 in Section 26 of the Environment and Land Court Act** empowering the Chief Justice, by notice in this Gazette, to appoint certain magistrate to preside over cases involving the environment and land in respect of any area of the country. Pursuant to those powers, the **Chief Justice vide Gazette Notice No. 1471 dated 11<sup>th</sup> March 2016** gazetted various magistrates to preside over cases involving the Environment and Land in areas of their current stations and Mr. PETER N. KIAMA Principal Magistrate Wanguru is one of those magistrate so gazette.

The plaintiff/respondent has deponed in paragraph 3 of his replying affidavit that this application for transfer is meant to delay the determination of this matter. I would like to assure the plaintiff/respondent that all Courts, including the subordinate Courts, are now enjoined by the provisions of **Sections 1A and 1B of the Civil Procedure Act** to ensure the just, expeditious, proportionate and affordable resolution of

cases and no doubt Mr. Kiama will bear those principles in mind and therefore the plaintiff/respondent should be assured of a speedy resolution of this dispute which was only filed in July 2015 and is therefore not an old case by any standards.

Ultimately therefore, having considered all the issues herein, I am satisfied that this is a proper case to transfer to the Principal Magistrate Court at Wanguru for hearing and final determination.

It will therefore be transferred there for mention on 30<sup>th</sup> March for further orders.

Each party shall meet their own costs of this application.

It is so ordered.

**B.N. OLAO**

**JUDGE**

**16<sup>TH</sup> MARCH, 2016**

Ruling delivered this 16<sup>th</sup> March 2016 in open Court

Mr. Murigu for Plaintiff/Respondent present

Ms Magara for Mr. Ombachi for 3<sup>rd</sup> Defendant/Respondent present.

**B.N. OLAO**

**JUDGE**

**16<sup>TH</sup> MARCH, 2016**

COURT

Soon after delivering this ruling, I have now become aware of the conservatory orders issued on 14<sup>th</sup> March 2016 in **Malindi Constitutional Petition No. 3 of 2016** which touch on the recent Statute law (**Miscellaneous Amendment Act No. 25 of 2015**) which I have referred to in my ruling.

However, it is also clear that the decision to transfer this suit was not solely based on the said **Statute law Amendment Act** but on my finding that under **Section 13 of the Environment and Land Court Act**, this Court has appellate jurisdiction which means that jurisdiction can only be exercised while hearing appeals from subordinate Courts. Therefore to allay any confusion that may arise, and I have transferred land cases to that Court previously, I hereby confirm that those conservatory orders issued in the Malindi Court have no bearing on this suit. Let it proceed for hearing at Wanguru Court as directed.

**B.N. OLAO**

**JUDGE**

**16<sup>TH</sup> MARCH, 2016**