

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

MISC. CIVIL APPLICATION NO. 11 OF 2016

NATIONAL BANK OF KENYA LIMITED.....APPLICANT

VERSUS

TACHASIS WHOLESALERS.....RESPONDENT

RULING

National Bank of Kenya Limited has come to this Court praying that Eldoret CMCC No. 904 of 2012 between *Tachasis Wholesalers Ltd* as plaintiffs and National Bank of Kenya as defendant to be transferred to this court for trial and final disposition. The application is based on grounds that at all material time of institution of the suit Eldoret Environment and Land Case No. 65 of 2016 (Tachasis Wholesalers Vs National Bank of Kenya), the respondent herein was aware that he had filed a similar suit in the Lower Court (Eldoret CMCC No. 904 of 2012). According to the applicant the cause of action is the same in both matters Eldoret CMCC No. 904 of 2012 and Eldoret Environment and Land Court Case No. 65 of 2016. Moreover, the parties are the same in both matters. The plaintiff in Eldoret CMCC No. 904 of 2012 admits to have been advanced a loan yet in Eldoret Environment and Land Case No. 65 of 2016, he denies knowledge of having been advanced a loan by the defendant herein. The respondent/plaintiff herein has an outstanding arrears of Kshs.40,829,246.85, which keeps on accruing interest. The respondent/plaintiff herein has filed the suits with two different advocates who may not be aware of existence of another similar suit. The Lower Court may not have jurisdiction to hear and determine this case considering the amount in dispute. The plaintiff herein filed Eldoret CMCC No. 904 of 2012 on the 7.11.2012, whereas Eldoret Environment and Land Case No. 65 of 2016 was filed on the 22.3.2016. The defendant/applicant herein has filed defences in both suits wherein the prayers being sought are the same. It is claimed that both matters have partly proceeded to full trial. It is only fair and convenient that this application be allowed. The plaintiff/respondent will not suffer any prejudice if the same is allowed and that the application has been brought in utmost good faith.

The application is supported by the affidavit of *Paul Kipkore Chelang'a* who reiterates the grounds of the application thus that the plaintiff herein has filed two suits Eldoret Environment and Land Case No. 65 of 2016 and Eldoret CMCC No. 904 of 2012, where the cause of action is the same and that the defendant/applicant herein has filed defences in both suits. He is aware that the plaintiff herein owes the bank a sum of Kshs.40,829,246.85 and that the matter in Eldoret CMCC No. 904 of 2012 has partly proceeded. He is aware the respondent herein has sued the bank, thus, the cause of action arose within the territorial jurisdiction of this court. He is well informed that the plaintiff herein has filed the two cases with the same cause of action through different advocates. The plaintiff/respondent herein admit to have taken a loan from the defendant/applicant in Eldoret CMCC No. 904 of 2012 whereas on the other hand, he denies taking a loan in Eldoret E & L NO. 65 of 2016. He has been informed by his advocates on record that the Lower Court does not have jurisdiction to hear and determine this case.

He is further advised by his advocate on record that in the circumstances, it is in the interest of justice and fairness that Eldoret CMCC No. 904 of 2012 be transferred to Eldoret Environment & Land Court for hearing and determination and that no prejudice will be occasioned upon the plaintiff in the event this application is allowed since the destined court is convenient to both parties. The respondent filed grounds of opposition stating that the court has no jurisdiction to grant the orders sought.

I have considered the application and do find that the jurisdiction of this court is derived from Article 162 Of the Constitution of Kenya and section 13 of the Environment and Land Court Act. Article 162(2)(b) of the Constitution of Kenya provides that Parliament shall establish courts with the status of the High Court

to hear and determine disputes relating to the environment and use and occupation of and title to land. Article 162(3) of the Constitution has empowered Parliament to determine the jurisdiction and functions of the Environment and Land court. Pursuant to that Article, Parliament enacted the Environment and Land Court Act which came into force on 30th August 2011. The Act, at Section 13, sets out the jurisdiction and functions of the court. The Constitution recognized the fact that the new courts under Article 162 (2) would not be established immediately and therefore the founders of the Constitution provided at Section 22 of the Sixth Schedule that all judicial proceedings pending before any court were to continue being heard and determined by the same court or a corresponding court established under the Constitution or as directed by the Chief Justice or the Registrar of the High Court. On 9th November 2012, the Chief Justice, published “Practice Directions on Proceedings Relating to the Environment and the use and occupation of title to land” in gazette notice number 16268. Rule 7 of those directions provides as follows:

“Magistrates Courts’ shall continue to hear and determine all cases relating to the environment and the use and occupation of and title to land (whether pending or new) in which the courts have the requisite pecuniary jurisdiction.”

The said Rule was reproduced verbatim in the subsequent Practice Directions that were issued by the Chief Justice in gazette notice number 5178 of 28th July 2014. The direction by the Chief Justice “clarifying” the jurisdiction of the Magistrates court in handling disputes relating to the Environment and Land was informed by the provisions of section 13 (1) of the Environment and Land Court Act which provides that the Environment and Land Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2) (b) of the Constitution. I have considered the application and submissions by counsel for the rival parties and do find that granting prayer 3 of the Notice of Motion dated 6.7.2016 will amount to transferring to this court a matter which is not a dispute relating to the environment and the use and occupational of, and title to land. The plaintiff in the lower court appears to be seeking for information in respect of the loan advanced by the defendant in that matter. I have perused the pleadings in CMCC No. 904 of 2012 and do find that the matter as pleaded is not ripe for transferring to this court. Even if the dispute relates to land which I have found to the contrary it appears to have been filed on the 7th of November 2012 and therefore it was pending before the lower court when the practice directions were made and therefore can proceed before the lower court for hearing and determination. On the issue of pecuniary jurisdiction, this court finds that there is no indication that the plaintiffs claim in the lower court is based on any monetary value as the plaintiff merely seeks for documents executed in respect of the loan. The application is otherwise dismissed with costs.

DATED AND DELIVERED AT ELDORET ON 28TH DAY OF OCTOBER, 2016.

ANTONY OMBWAYO

JUDGE