



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC MISC. APPLICATION NO.144 OF 2014

DOMINC NYAMEMA GORAPPLICANT

VERSUS

MICHAEL OMBARA AJUOGA1ST DEFENDANT

DAVID OTIENO AMOI.....2ND RESPONDENT

RULING

1. **Domic Nyamema Gor**, the applicant, filed the notice of motion dated 16th July 2014 seeking to have Kisumu H C C C No.245 of 1998 which was transferred to Kisumu Chief Magistrates court to be returned to this court for hearing. The application is supported by his affidavits sworn 16th July 2014 October 2014 and 21 May 2015 in which he among others depones that none of the parties had moved the High Court to transfer the case to the lower court.

2. The application is opposed by **Michael Obara Ajuonga** and David Otieno Amoi the Respondents, through the grounds of opposition dated 22nd July 2014.

3. The application came up for hearing on the 4th October 2016 when the Applicant and Mr. Oguso, learned counsel for the Respondents, made their oral rival submissions.

4. The following are the main issues for the court's determination;

a) Whether the Applicant has made a reasonable case for the transfer of the suit pending in the lower to this court.

b) Who should pay the costs.

5. The court has carefully considered the notice of motion, the affidavit evidence by the Applicant, the grounds of opposition, the oral rival submissions and concluded as follows;

a) That from the copy of the plaint dated 12th October 1998, and the amended plaint dated 2nd March 1999 annexed to the applicant's supporting affidavit, the suit was filed in the High Court Kisumu under reference Kisumu H CCC No.245 of 1998.

b) That the Applicant herein is the Plaintiff in the said suit while the Respondents herein are the Defendants. That it therefore follows that the said plaint and amended plaint referred to in (a) above are the suit papers filed by and on behalf of the Applicant. That it is therefore

confusing for the Applicant to depone as he did at paragraph 5 of the supporting affidavit sworn on 16th July 2014 that he happened to

“have perused the court file I came across the amended plaint which was not served upon myself as required by the law.....”

c) That from the oral submission by Applicant and counsel for the Respondents and the hearing notice in Kisumu CM CC NO.232 of 2003, also annexed to the supporting affidavit, Kisumu HCCC No.245 of 1998 was registered as Kisumu CMCC No.232 of 2003 after being transferred to that court. That it is therefore Kisumu CM CC No.232 of 2003 that the Applicant seeks to be transferred to this court for hearing.

d) That from the submission made before this court during the hearing of this application, both the Applicant and the Respondents have already testified before the lower court and that what was remaining was the rendering of the judgment. That the status lower court file being as agreed by both sides, this court is of the considered finding that there has been no grounds presented by the Applicant that could make the court order the transfer of a Civil suit pending judgment in the lower court to this court.

e) That in addition, the order transferring Kisumu HCC NO.245 OF 1998 to the lower court where it was registered as Kisumu CM CC No.232 of 2003 was made by a court of concurrent jurisdiction to this court. The notice of motion dated 16th July 2014 is not of review or setting aside for the transfer orders and in any case it is too late for that kind of an application. That had any of the parties been aggrieved by the High Court orders transferring the case to the lower court, the forum to seek redress was the Court of Appeal and not this court.

6. That flowing from the foregoing, the Applicant’s notice of motion dated 16th July 2014 seeking to transfer Kisumu CM CC NO.232 of

2003, which is reportedly pending for judgment in the lower court, is without merit and is hereby dismissed with costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 14TH DAY OF DECEMBER 2016

In presence of;

Applicant Present

Respondents Absent

Counsel Mr siganga for Onsongo for Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/12/2016

14/12/2016

S.M. Kibunja judge

Oyugi court assistant

Applicant present

Mr. Siganga for Onsongo for Respondent

Court: Ruling delivered and dated in open court in presence of the Applicant and Mr. Siganga for Onsongo for Respondent.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/12/2016