



IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC CIVIL CASE NO 308 OF 2013

PRADEEP KHARAMSHI SHAH.....1ST PLAINTIFF

JAYANT RACH.....2ND PLAINTIFF

=VERSUS=

MANJULA DHIRAJLAL RATILAL.....1ST DEFENDANT

KETAN KUMAR DHIRAJLAL SONI.....2ND DEFENDANT

RULING

The application for determination is the Notice of Motion dated 24th January 2014 brought under section 1A, 1B, 3A of the Civil Procedure Rules seeking for orders that this court transfers this suit to the commercial and admiralty division of the High Court for final orders.

The application is premised on the grounds stated on the face of the application and the supporting affidavit of Jayant Rach the 2nd plaintiff who deposes that the suit was for a claim of Ksh 23,158,880/= plus interest thereon arising from an agreement which has been adopted as the decree with compound interest at 10% per month from 1st March 2013 therefore the matter is a commercial suit in nature and ought to be heard and determined at the Commercial division of the High Court and not the Land and Environment Division. The deponent further stated that the transfer of this suit would not cause any prejudice to the defendants and urged this court to allow the application.

This application is opposed. The defendants filed grounds of opposition stating that the application is frivolous ,lacks merit and an abuse of the court process stating that the suit is properly filed in the Land and Environment Court which having pronounced the judgment and commenced execution process it is the same court to hear and conclude the matter. The defendants also stated that there is an application for stay of an order issued by a judge of the Environment and Land Court and is expected to be set aside by the judge. That the directions given on the hearing of the applications dated 16th September 2013 and 27th September 2013 the transfer sought would interfere with the directions given and which will lead to the delay of the determination of the applications and the suit touches on the sale of LR No 209/525/4 and LR Nairobi Block 34/524.

The applicant filed his written submissions on 11th March 2014 where he submitted that this court had powers under section 1A, 1B and 3A to move this case to the commercial division for smooth delivery of justice. The applicant also submitted that the defendants would not be prejudiced if the matter was

transferred to the commercial division and that the process to quickly dispose the matter will benefit both parties. He opined that the ELC division was swamped with cases and the probability that the parties may take time to have this matter disposed of in a quick manner.

The Respondents filed their submissions on 10th March 2014 and stated that the application does not serve the best interest of justice for expedite determination and conclusion of the suit and is an attempt to derail the prompt disposal of the matter and doesn't serve the best interest of the respondents. They highlighted the pending applications touches on two parcels of land. Further they submitted that the court having pronounced judgement and commenced execution process it is the same court to hear and determine any matter that arises from the execution process and that direction had already been given by this court on the hearing of the applications dated 16th September 2013 and 27th September 2013 the transfer sought would interfere with the directions given and lead to the delay of the determination of the applications.

I have considered the submissions by both parties and the issue for consideration here is whether this court can transfer this suit to the Commercial and Admiralty division of the High Court.

The new sections 1A and 1B of the Act introduced the overriding objective of the Act and the Civil Procedure Rules made thereunder. That overriding objective is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act. Parties to such proceedings and their advocates are under a statutory duty to assist the court to further that overriding objective. The Constitution of Kenya, 2010 introduced the constitutional principle that in exercising judicial authority the courts and tribunals shall be guided by the principle, among others, that justice shall be administered without undue regard to procedural technicalities.

Nairobi HC Miscellaneous Civil Application NO. 357 of 2010, John Mwangi Karanja – vs – Alfred Ndiangui (Unreported). In a ruling dated 12th May 2010 I delivered myself as follows –

*“It has been settled law for many years now that this court has no jurisdiction under section 18 of the Act to transfer a case from one subordinate court to another if the original court had no jurisdiction in the first place to hear and determine the suit. This jurisprudence was founded upon the well-known Ugandan case of **KAGENYI –VS- MUSIRAMO & ANOTHER [1968] EA 43** where it was held that whereas section 18 of the Ugandan Civil Procedure Act (which is identical to section 18 of our own Civil Procedure Act) gives the High Court a general power of transfer of all suits, which power may be exercised at any stage of the proceedings, even suo motu, by the court, an order for transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it”.*

If a suit finds itself in the wrong court, it is in the interests of justice and in the interests of all concerned that the suit be forwarded to the appropriate court with jurisdiction so that the issues in dispute can be properly and finally adjudicated? After all, the overriding objective of the Civil Procedure Act and Rules is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.

The applicant has rightly stated that it withdrew prayer (c) of the plaint which sought a “ *prohibitory order and or injunction to be registered against the title to the property that acted as security preventing the defendants from registering any transaction to the said property known as Title Nairobi 34/524 located along wambugu road ,parklands without the plaintiffs consent*” What the plaintiff is seeking in the Plaint is Ksh 23,158,880/= together with 10% compound interest from 1st March 2013. It is also the plaintiff averment in the plaint that the security for the loan is the title document in respect of LR No Nairobi/39/525 and LR No 209/89/9 registered in the name of Manjula Dhirajlal Ratilal. **Article 162 (2) (b) of the Constitution** states 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**”.

Further **section 150 of the Land Act** states that,

“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” .

From the two provisions it is evident that this court has the jurisdiction to hear and determine matters actions and proceedings concerning land. The plaintiff is seeking to be paid the sums of money accrued after the defendants took a loan from them and the security for the loan is land therefore this case is properly lodged in the right court and in the upshot this application is dismissed with costs to the Defendants.

Dated and delivered this **14th** day of **April, 2014**

L. GACHERU

JUDGE

In the Presence of:-

.....for the Plaintiff/Applicant

.....for the 1st, 2nd, 3rd and 4th Defendants/Respondents

Lukas : Court Clerk

L.GACHERU

JUDGE