



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT NAKURU
MISC APPLICATION NO. 35B OF 2014
KIPUTEI OLE NAGOL.....APPLICANT
VERSUS
JOHN ORINA OGAO.....1ST RESPONDENT
MEIRIAPIE OLE MALETO.....2ND RESPONDENT
RULING

1. **Kiputei Ole Nagol** (Applicant) filed in this court a Notice of Motion dated **30th January, 2014**. It is a Miscellaneous application seeking orders to transfer Narok Chief Magistrate's **Civil Case No. 29 of 2012** to this court. The application is supported by an affidavit sworn by the applicant. To the same, the applicant has attached the pleadings in CMCC No. 29 of 2012. I have perused the same and they appear to me to be a suit for ownership of land and cancellation of title. This is clearly a land matter.

2. The application is not opposed.

3. The power to transfer a suit by the High Court is provided for under **Section 18. (1)** of Civil procedure Act , 2010. It states as follows;

"On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, on its own motion without such notice, the High Court may at any stage—

(b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter-

(i)try or dispose of the same; or

(ii)transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(iii)retransfer the same for trial or disposal to the court from which it was withdrawn. "

4. Under the above section, the High Court has unfettered jurisdiction to transfer or withdraw a suit from the lower court to itself where it so deems fit.

whether Magistrates courts have jurisdiction to hear and determine Land matters?

6. **Section 159** of the Registered Land Act, Cap 300 (repealed) provides:-

"Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate's Court or where dispute comes within the provisions of section 3(1) of the land disputes Tribunal Act in accordance with that Act.

7. The Land Act 2012, The Land Registration Act, 2012 and the Environment and Land Court Act, repealed a number of statutes that dealt with environment and land including the Registered Land Act and the Registration of Titles Act.

The Environment and Land Court was established by **Article 162(2) (b)** of the Constitution and operationalised by the Environment and Land Court Act.

Section 13 (1) of the Act empowers it to deal with environment and land matters. Section 13(1) provides:-**"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 and with the provisions of the Act or any other written law relating to environment and land."

8. However the fact that parliament conferred both original and appellate jurisdiction on the Court negates the possibility that it intended to confer exclusive original jurisdiction on the Court. It is in the same spirit that **Section 30** of the Act (Transitional clause) provides:-

"All proceedings relating to the environment or to the use or occupation and title to land pending before any court or local tribunal of competent jurisdiction shall continue to be heard and determined by the same court or as may be directed by the Chief Justice or the Chief Registrar."

9. Pursuant to the powers given to the Chief Justice under the above Section, the Chief Justice has so far issued 4 practice directions, the latest being the practice direction contained in **Gazette Notice No. 5176**, dated **28th July 2014** to the effect that:-

"Magistrates court 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."

10. Even though the above practice direction addresses cases filed before Resident Magistrate Courts, a literal and purposive interpretation of Section 13 as read with Section 30 of the Environment and Land Court Act, aforementioned, leads one to the conclusion that the sub-ordinate courts, local tribunals, persons or authorities with requisite pecuniary or subject matter jurisdiction will continue to hear and determine disputes concerning environment and use and occupation, and title to land subject to their pecuniary or subject matter jurisdiction.

Whether Magistrate courts have jurisdiction to order for rectification of the register and /or cancellation of title?

11. Under the Registration of Titles Act (repealed), court was defined as the High Court. Consequently the courts have held that it is only the High Court that could cancel a title under the said Act. (See the cases of **National Housing Corporation V The Chief Magistrate's Court, Mombasa & 2 Others** [2012] eKLR where the courts found that under this section, only the High Court had powers to cancel a title issued under the Act and also the case of **Job Muriithi Waweru v Patrick Mbatia** [2008] eKLR where

the court held likewise that in purporting to do so the magistrate acted outside his jurisdiction.

12. When the Environment and Land Court was established, it replaced the High court as the court envisioned in the Registration of Titles Act (repealed). Section 2 of the Land Registration Act, 2012 defines court as; **"Court" means the Environment and Land Court established under the Environment and Land Court Act, 2011, No. 19 of 2011;**"

13. Under **Section 80 (1)** of the same Act, the court (read to mean the Environment and Land Court), may subject to subsection (2), order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

14. It is clear from the above section, that the Environment and Land Court is the court that has the requisite jurisdiction to cancel title and order for the rectification of the register. A look at the prayers sought in the matter filed before the Chief Magistrate's court in Narok, leads one to the conclusion that the Magistrate's court does not have the competence to determine the prayer on cancellation of title.

15. I therefore allow the application and transfer the suit to Nakuru Environment and Land court for hearing and determination.

Costs will be in the cause

Dated, signed and delivered at Nakuru this 10th day of December, 2014

L WAITHAKA

JUDGE

PRESENT

Mr Kipkoech holding brief for Mr Nyamwange for the Applicant

N/A for the respondent

Emmanuel Maelo: Court Assistant

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JUDGE