



Khwatenge v Khwatenge & another (Environment and Land Miscellaneous Application E003 of 2023) [2024] KEELC 3431 (KLR) (30 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3431 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2023
DO OHUNGO, J
APRIL 30, 2024**

BETWEEN

SAMMY WERUNGA KHWATENGE APPLICANT

AND

JAPHETH LANDO KHWATENGE 1ST RESPONDENT

PETER L. KHWATENGE 2ND RESPONDENT

RULING

1. The applicant moved the court through Notice of Motion dated 11th July 2023, seeking transfer of Kakamega MCELC No 306 of 2018 to this court for hearing and determination. The application is based on the grounds listed on its face and is supported by an affidavit sworn by the applicant.
2. The applicant deposed that the respondents filed the case against him in this court as Kakamega ELC No 270 of 2017 and that the court transferred the matter to the Subordinate Court without consulting the parties. He added that judgment had been entered in the matter prior to its transfer and that the Subordinate Court has no jurisdiction in the matter. That the matter ought to be transferred back to this court to enable him to prosecute his application to set aside the judgment. He annexed a copy of the plaint.
3. Although evidence of service upon the respondents was availed, the respondents neither responded to the application nor attended court at its hearing. The application is therefore unopposed. Counsel for the applicant urged the court to grant the orders sought.
4. I have considered the application and the supporting affidavit. The sole issue for determination is whether the orders sought should issue.
5. The applicant contends that the Subordinate Court has no jurisdiction to hear and determine his application to set aside judgment which he says was entered in the matter prior to its transfer to the



Subordinate Court. Besides the plaint, he has not annexed any record to show the order he intends to set aside. He has not even annexed his said application. Considering the Subordinate Court case number, it seems that the transfer was in the year 2018. One wonders why it has taken over five years to make the present application.

6. I have perused the annexed copy of the plaint and I note that claim pending in the Subordinate Court concerns removal of a caution that the applicant is said to have placed on the parcel of land known as North Kabras/Luandeti/2743. A permanent injunction to restrain the applicant from interfering with the said property was also sought. The dispute as disclosed in the plaint does not in any way concern ownership of the property.
7. Pursuant to Section 7 (1) (a) of the Magistrates' Courts Act, the Subordinate Court has jurisdiction in civil matters in which the value of the subject matter does not exceed twenty million shillings. There is nothing in the application to suggest that the subject matter is valued more than twenty million shillings.
8. As regards the applicant's fear that the Subordinate Court has no jurisdiction to hear and determine his application to set aside judgment which he says was entered in the matter prior to its transfer to the Subordinate Court, it must be noted that once a file is transferred to the Subordinate Court for hearing and determination, all the interlocutory orders subsisting in the file as of the date of transfer are deemed to be orders of the Subordinate Court. The Subordinate Court is at liberty to consider and determine any application for setting aside on its merits.
9. I find no merit in Notice of Motion dated 11th July 2023, and I therefore dismiss it. No order on costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF APRIL 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Ogonji holding brief for Ms Rauto for the Applicant

No appearance for the Respondents

Court Assistant: M Nguyayi

