



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**MISC. CIVIL APPLICATION NO. 7 OF 2013**

**ELIJAH KOMEN KATYA .....APPLICANT**

**VERSUS**

**CHEBII CHEMJOR .....RESPONDENT**

**RULING**

***(Application to transfer suit filed in magistrate's court to the ELC; suit filed before ELC came to being; case unaffected by establishment of ELC; application dismissed).***

1. The application before me is that dated 15 January 2014. It seeks orders to have the suit Nakuru Chief Magistrate's Civil Suit No. 1183 of 2009, *Elijah Komen Katya vs Chebii Chemjor*, transferred to this court, The Environment and Land Court, sitting at Nakuru, for hearing and disposal. The applicant is the plaintiff in the said suit. He has averred that he is seeking the transfer of the case because it was filed in a court that lacks jurisdiction. In his supporting affidavit, he has deposed that he has been advised by his advocates, that it is only the Environment and Land Court which has jurisdiction to adjudicate over a claim for adverse possession and in the circumstances, the case needs to be transferred to this court.
2. The respondent did not file anything to either support or oppose the motion and neither did his counsel appear at the inter partes hearing of the application.
3. I have considered the matter. I find it interesting that the applicant is the same person who filed the suit before the Magistrate's Court and now says that he filed a suit in a court which has no jurisdiction. Be as it may, I do not see any merit in the application.
4. First, this suit is not one for adverse possession as claimed in the supporting affidavit. In his plaint, which was annexed to the supporting affidavit, he pleaded that he purchased one share, equivalent to 1.5 acres from an entity called Kalenjini Enterprises. The defendant also purchased one similar share. He averred that he purchased another one share in the name of the defendant for the benefit of the defendant and himself. However, the defendant ended up registering himself as owner of the entire 4.5 acres comprising of the three shares now registered as Dundori/Mugwathi Block 2/131 (Koilel). In the suit the applicant inter alia sought an order that the land be subdivided into two portions, one of 3 acres to himself and another of 1.5 acres to the defendant.
5. The case sought to be transferred was commenced sometime in October 2009. The suit property to me appears to have been one registered under the Registered Land Act (now repealed by the Land Registration Act, 2012). In the year 2009, there was no Environment and Land Court. The Environment and Land Court is a creature of the 2010 Constitution which was promulgated on 29 August 2010. As at

2009, for disputes over land registered under the Registered Land Act,(now repealed) one needed to file a case before the High Court, or one could file a case at the Magistrate's Court if the subject matter of litigation did not exceed Kshs. 500,000/=. This was brought out by Section 159 of the Registered Land Act, which provided as follows :-

*159. 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 the dispute comes within the provisions of section 3 (1) of the Land Disputes Tribunals Act in accordance with that Act.*

6. The dispute as presented was not one falling within the jurisdiction of the Land Disputes Tribunal. The jurisdiction of the Land Disputes Tribunal was prescribed in Section 3(3) of the Land Disputes Tribunal Act (now repealed by the Environment and Land Court Act, 2011) which provided as follows :-

*3. (1) Subject to this Act, all cases of a civil nature involving a dispute as to—*

*(a) the division of, or the determination of boundaries to land, including land held in common;*

*(b) a claim to occupy or work land; or*

*(c) trespass to land,*

*shall be heard and determined by a Tribunal established under section 4.*

7. The case of the applicant does not fall within any of the above parameters. The applicant therefore had leeway to either file his case at the High Court or the Magistrate's Court. Of course the latter would only have had jurisdiction if the dispute was one of 25,000 pounds (equivalent of Kshs. 500,000/=). I have not seen anywhere in the application where the applicant has averred that the dispute was one which exceeded the sum of Kshs. 500,000/= , and if it did, then the applicant had no business filing the suit before the Magistrate's Court in the first place. In other words, the applicant has not demonstrated to me that the suit when filed was not one that the Magistrate's Court could not hear.

8. Just because there is an Environment and Land Court does not mean that matters that had been filed in courts which were competent to hear them should now be transferred to the Environment and Land Court Act. In other words, matters filed in courts of competent jurisdiction, before the establishment of the Environment and Land Court Act, need not be transferred to the Environment and Land Court unless the law prescribes as such. To my knowledge, nowhere is it prescribed that a matter that was filed in the Magistrate's Court, where the Magistrate's Court had jurisdiction when the case was filed, must be transferred to the Environment and Land Court. Neither has the applicant pointed me to any law.

In the premises, the application is dismissed but since it was not opposed, I make no orders as to costs.

**Dated, signed and delivered in open court at Nakuru this 12<sup>th</sup> day of July , 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of :**

Mr. Langat for applicant

N/A on part of M/s Rubua Ngure & Co. for respondent

Court Assistant : Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**