



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

MISC APPLICATION NO 20 OF 2018

ISAAC SAITOTI OLE NAMPASO.....APPLICANT

VERSUS

SAMWEL MACHAU NABAALA.....1ST RESPONDENT

EQUITY BANK LIMITED.....2ND RESPONDENT

JOSRICK MERCHANT AUCTIONEERS.....3RD RESPONDENT

RULING

1. The applicant has applied to this court under certificate of urgency through his notice of motion dated 4th October 2018 for transfer of the Chief Magistrate’s Civil Suit No 64 of 2018 to this court pursuant to the provisions of article 159 of the 2010 Constitution and sections 1A, 18 and 3A of the Civil Procedure Act [Cap 21] Laws of Kenya. The application was duly certified urgent.

2. The application is supported by two grounds that are set out on the face of the notice of motion. Counsel for the applicant has stated that the Court of Appeal has pronounced itself that the Environment and Land Court and subordinate courts have no jurisdiction in matters of mortgages and charges. Additionally, counsel has stated that it is in the interest of justice that this suit be heard and determined in the High Court.

3. Furthermore, the applicant has deponed to a 7 paragraphs supporting affidavit. He has deponed to the same matters that are set out as grounds in the notice of motion.

4. The second respondent has filed a 20 paragraphs replying affidavit in opposition to the application for transfer of suit No. 64 of 2018 to the High Court for determination. Following advice from his counsel on record the respondent believes that that the Court of Appeal in *Co-operative Bank of Kenya Ltd v. Patrick Kangethe Njuguna & 5 others [2017] eKLR* ruled that mortgages, charges, collection of dues and rents fall within the civil jurisdiction of the High Court. He has also deponed that the Court of Appeal did not divest the jurisdiction of the magisterial courts from hearing and determining commercial disputes, subject only to their monetary jurisdiction as set out in section 7 of the Magistrates’ Courts Act. He has deponed that it is desirable, fair and in the interests of justice that the suit be heard and determined in the magisterial court as a commercial dispute.

5. Both counsel have filed written submissions which I have considered.

6. In the light of the affidavit evidence, the rival submissions of both counsel and the applicable law I find the following to be the issues for determination.

ISSUE 1

Whether or not the subordinate magisterial courts have jurisdiction to hear and determine commercial disputes.

ISSUE 2

Whether or not the applicant is entitled to the prayers sought.

ISSUE 3

Who bears the costs of this application"

ISSUE 1

7. The Court of Appeal in *Co-operative Bank of Kenya Ltd v Patrick Kangethe Njuguna, supra*, ruled that mortgages, charges, collection of dues and rents fall within the civil jurisdiction of the High Court. I agree with counsel for the 2nd respondent that that court did not divest the subordinate magisterial courts of their jurisdiction to entertain commercial disputes, but this is only subject to their monetary jurisdiction as set out in section 7 of the Magistrates' Courts Act [Cap 15] Laws of Kenya. I therefore find that those courts have jurisdiction to entertain and determine commercial disputes subject only to their monetary jurisdiction.

ISSUE 2

8. In the light of the foregoing finding, I hereby find that the applicant is not entitled to the prayers sought.

ISSUE 3

9. Costs follow the event in terms of section 27 of the Civil Procedure Act [Cap 21] Laws of Kenya.

10. The upshot of the foregoing is the applicant's application fails, with the result that it is hereby dismissed with costs to the 2nd respondent.

Ruling delivered in open court this 19th day of December, 2018 in the presence of Mr. Onduso holding brief for Mr. Kamwaro and Mr. Onduso for the 1st respondent, and in the absence of both 2nd and 3rd respondents.

J. M. BWONWONGA

JUDGE

19/12/2018



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