



Nyakango (Suing on his own behalf and on behalf of Lilian Moraa Orina, Felix Osindi Orina, Isaac Morara Orina, Steve Mogeni, Jemiah Kwamboka and Esther Kemunto) v Osindi & 3 others (Miscellaneous Application 10 of 2022) [2023] KEELC 16495 (KLR) (21 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16495 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
MISCELLANEOUS APPLICATION 10 OF 2022
M SILA, J
MARCH 21, 2023

BETWEEN

MARK NYAKANGO (SUING ON HIS OWN BEHALF AND ON BEHALF OF LILIAN MORAA ORINA, FELIX OSINDI ORINA, ISAAC MORARA ORINA, STEVE MOGENI, JELIAH KWAMBOKA AND ESTHER KEMUNTO PLAINTIFF

AND

JAPHETA ORINA OSINDI 1ST DEFENDANT
JUSTINE MOCHACHE 2ND DEFENDANT
ERICK OGIKI 3RD DEFENDANT
NYAMIRA LANDS REGISTRY 4TH DEFENDANT

(Application for transfer of suit from the Chief Magistrates' Court Kisii, to the Chief Magistrates' Court Nyamira; suit land said to be in Nyamira though case filed in Kisii; application not opposed; application allowed)

RULING

1. The application before me is that dated 5 October 2022 and seeks the transfer of the suit Kisii CMCC ELC Miscellaneous Case No E021 of 2022, Mark Nyakango Orina v Japheta Orina Osindi, from the Chief Magistrates' Court Kisii, to the Chief Magistrates' Court in Nyamira.
2. The applicant avers that he filed the suit at the Chief Magistrates' Court Kisii, but when the matter went before the Magistrate, the Magistrate was of opinion that the matter ought to have been filed in the Magistrates' Court at Nyamira. The reason is that the land, which is the subject matter of the



dispute, being the land parcel Ekerubo Settlement Scheme/255, is located in Manga, within Nyamira County.

Nothing was filed to oppose the motion.

3. The application is premised upon section 18 of the *Civil Procedure Act*, Cap 21, Laws of Kenya, which provides as follows :-

18. Power of High Court to withdraw and transfer case instituted in subordinate court

(1) 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, or of its own motion without such notice, the High Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(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.

(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

4. It will be seen from the above that the High Court (and this ought to apply to courts of equal status) has power under section 18 (1) (b) (ii) to transfer suit from one subordinate court to another.

5. It has been said that the subject matter herein is in Nyamira County. If that is the case, then I have no reason to decline this application. I also observe that nothing was filed to oppose it.

6. I therefore allow the application and order the transfer of the suit Kisii Chief Magistrates' Case No ELC Miscellaneous Case No E021 of 2022, Mark Nyakango Orina v Japheta Orina Osindi, from the Chief Magistrates' Court Kisii, to the Chief Magistrates' Court in Nyamira.

7. I make No orders as to costs.

8. Orders accordingly.

DATED AND DELIVERED THIS 21ST DAY OF MARCH, 2023.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

