



Prasun Construction Co. Limited v Texplast Industries (Civil Miscellaneous Application E341 of 2022) [2023] KEHC 21743 (KLR) (Civ) (24 August 2023) (Ruling)

Neutral citation: [2023] KEHC 21743 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL MISCELLANEOUS APPLICATION E341 OF 2022

AN ONGERI, J

AUGUST 24, 2023

BETWEEN

PRASUN CONSTRUCTION CO. LIMITED APPLICANT

AND

TEXPLAST INDUSTRIES RESPONDENT

RULING

1. The applicant herein Prasun Construcion Co. Ltd filed two applications both dated 10/6/2022 in Misc. case no. E341 and no. E342 of 2022 respectively seeking transfer of Nairobi CMCC No. E8673 and E8674 of 2021 from Chief Magistrate’s court at Milimani in Nairobi to Kiambu Chief Magistrates court for determination.
2. The two applications which are similar are based on the ground that the subject matter of this suit is based at Kiambu county.
3. The respondent filed a preliminary objection dated 11/6/2020 on the ground that the court does not have jurisdiction to handle the matter as the suit property and the defendants are based at Magana Kikuyu sub county within Kiambu county.
4. It is not clear what court lacks jurisdiction. If the defendant is saying the Nairobi Chief Magistrate lacks jurisdiction then he has no basis for opposing the application for transfer of the matters.
5. It is trite law that a suit ought to be filed in the court within the lowest jurisdiction to handle the case. Section 11 of the *Civil Procedure Act* Provides that;

Court in which suit to be instituted

Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same county competent to try it,



a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts:

Provided that—

- i. if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court; and
 - ii. nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same county.
6. I allow the applications dated 10/6/2022 and I direct that Milimani CMCC Cases no. E8673 and E8674 of 2021 be and are hereby transferred to Kiambu Chief Magistrate’s court for disposal.
7. Each party to bear its own costs of the applications.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 24TH DAY OF AUGUST, 2023.

.....

A. ONGERI

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

