



Kipkai Enterprises Limited & 2 others v Pietrkiewiz (Civil Miscellaneous Application E242 of 2023) [2023] KEHC 26766 (KLR) (Civ) (21 December 2023) (Ruling)

Neutral citation: [2023] KEHC 26766 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL MISCELLANEOUS APPLICATION E242 OF 2023
AN ONGERI, J
DECEMBER 21, 2023**

BETWEEN

**KIPKAI ENTERPRISES LIMITED 1ST APPLICANT
JANE NYABOKE NJAGI 2ND APPLICANT
ANGEL MICHAEL NJAGI 3RD APPLICANT**

AND

MICHAEL PIETRKIEWIZ RESPONDENT

RULING

1. The application dated 26/4/2023 was placed before this court for determination.
2. The said application is brought under section 18(1) (b) and (2) of the [Civil Procedure Act](#).
3. The application is seeking transfer of CMCC No. E5009 of 2022 from the Chief Magistrate's Court to the High Court for determination.
4. The application is based on the following grounds;
 - i. The Chief Magistrate's Court does not have pecuniary jurisdiction any more to hear and determine matter on which claim exceeds ksh. 25 million as per the counter claim filed by the 1st, 2nd and 3rd defendants herein.
 - ii. In the interest of justice, the lower court file in Milimani CMCC No. E5009 of 2022 should be transferred so that the applicants counter claim of over kshs. 25 million can be disposed expediently by the High Court commercial and Admiralty court and the real position between the parties be settled once and for all.



5. It is supported by an affidavit sworn by the 2nd applicant sworn on 26/4/2023 which reiterates the same grounds of appeal stated above.
6. The parties filed written submissions as follows; the applicant submitted that according to order 18 rule (ii) the court has power to transfer cases either on its own motion or by way of application by parties to the suit and at any stage of the proceedings. The applicant argued that the pecuniary claim of over 25 million ousted the jurisdiction of the subordinate court hence it became necessary to apply for transfer of the case to High Court which has the necessary jurisdiction to hear this matter.
7. The respondent alternatively submitted that in the present case it is evident that the main suit and counterclaim herein relate mainly to the breach of a tenancy agreement involving (1) allegations of non-payment of rent; (2) unlawful distress for rent (3) illegal eviction of a tenant (4) breach of the tenant's right to quiet enjoyment of the rented property and (5) alleged damages to the suit property by the tenant and therefore the matter is purely a land dispute within the jurisdiction of the Environment and Land Court and not the Civil Division of the High Court where the instant application has been filed.
8. The respondent submitted that the applicant ought to have filed the instant application before the Environment and Land court. section 13 of the *Environment and Land Court Act* empowers the Environment and Land Court to hear and determine disputes relating to (1) Rents; (2) Contracts; (3) Choices in action or other instruments granting any enforceable interest in land; and (4) any other disputed relating to environment and land.
9. The issues for determination in this application are as follows;
 - i. Whether this court has jurisdiction to entertain the application.
 - ii. Whether the orders sought should be granted.
10. On the issue as to whether this court has jurisdiction to entertain this suit, I find that there is no dispute that the suit relates to payment of rent which is within the province of this court.
11. On the issue as to whether CMCC No. E5009/2022 should be transferred to this court, I find that the reason for seeking the transfer is that the counterclaim is seeking 25 million which is beyond the pecuniary jurisdiction of the Chief Magistrates court.
12. I allow the application dated 26/4/2023 and with costs to the applicants.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 21ST DAY OF DECEMBER, 2023.

A. N. ONGERI

JUDGE

