



**Oginda & 3 others v Onchwati (Miscellaneous Application
E008 of 2021) [2023] KEELC 17387 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17387 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
MISCELLANEOUS APPLICATION E008 OF 2021**

M SILA, J

MAY 11, 2023

BETWEEN

GEORGE NYAMBANE OGINDA 1ST PLAINTIFF

CHARLES ROSANA GISEMBA 2ND PLAINTIFF

ELKANAH BOSIRE 3RD PLAINTIFF

ROSANA OMWOYO DERRICK 4TH PLAINTIFF

AND

ELKANAH MONDA ONCHWATI DEFENDANT

RULING

1. The application before me is that dated 26 May 2021 filed by the plaintiffs in the suit Kisii CMCC/ELC No 73 of 2019. The applicants seek orders to have the suit Kisii CMCC/ELC No 73 of 2019 transferred from the Chief Magistrates' Court, Kisii, to this court for hearing and determination. The reason given is that the value of the suit property increased beyond the pecuniary jurisdiction of the Magistrates' Court during the pendency of the suit owing to improvements and construction on the land. In the supporting affidavit, sworn by George Nyambane Ogina, who is the first plaintiff, he has deposed that he and his co-plaintiffs filed the suit seeking to have the respondent permanently restrained from interfering with the land parcel Kisii Municipality/Block III/618. He has averred that on 5 May 2020, the respondent filed a valuation report dated 18 March 2020 which indicated that the value of the property is Kshs 25,000,000/= upon which the subordinate court downed its tools for want of pecuniary jurisdiction. He deposes that at the time of filing suit, on 31 May 2019, the value of the property was within the jurisdiction of the Magistrates' Court and has referred to a sale agreement dated 31 July 2014. He adds that the value of the property was escalated by the respondent, who proceeded to develop the property in contempt of a court order of injunction. He avers that when the suit was filed, there was no structure erected on the land.



2. The application is opposed by the respondent who is the defendant in the suit Kisii CMCC/ELC No 73 of 2019. He has sworn an affidavit where he has deposed that the suit before the Magistrate was struck out on 9 July 2021 for want of prosecution and no longer exists to be transferred. There is however a supplementary affidavit sworn by the applicants affirming that the suit was reinstated vide a ruling delivered on 13 June 2022.
3. Both Mr. Bosire, learned counsel for the applicants, and Mr. Nyambati, learned counsel for the respondent, relied on the affidavits filed and I have considered the same.
4. This court does have jurisdiction pursuant to Section 18 of the Civil Procedure Act, Cap 21, Laws of Kenya, to transfer a suit filed in the Magistrates' Court to itself.
5. The reason given in this instance is that the pecuniary value of the subject matter exceeds the limit of the Magistrates' Court which currently stands at Kshs. 20,000,000/= for the highest ranking Magistrate (Chief Magistrate) pursuant to Section 7 (1) (a) of the Magistrates' Courts Act, Act No 26 of 2015. The applicants have of course stated that when they filed their suit on 31 May 2019, the trial court had the requisite pecuniary jurisdiction but this was affected by developments made by the respondent while the suit was pending. To support their claim, the applicants have annexed a valuation report dated 18 March 2020. I have gone through that valuation report. I am at a loss as to its relationship with this case for it is a valuation report for the land parcel Central Kitutu/Mwamosioma/4900. I observe that the properties in dispute and which are well noted in the plaint are the land parcels Kisii Municipality/Block III/618 and Kisii Municipality/Block III/619. I have not been informed that there is any connection between the land parcel Central Kitutu/Mwamosioma/4900 and the parcels Kisii Municipality/Block III/618 and 619. There is therefore no evidence before me of what the values of these two properties, which are the properties in dispute, could be.
6. I find the application completely unsupported by any credible material and I have no option but to dismiss the same. The application is hereby dismissed with costs.
7. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 11TH DAY OF MAY, 2023.

JUSTICE MUNYAO SILA

JUDGE,

ENVIRONMENT AND LAND COURT

