



**Ethics and Anti Corruption Commission v Mideva & another (Environment and Land
Miscellaneous Application E017 of 2022) [2023] KEELC 18151 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18151 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E017 OF 2022
DO OHUNGO, J
JUNE 21, 2023**

BETWEEN

ETHICS AND ANTI CORRUPTION COMMISSION APPLICANT

AND

ROSE MUGITA MIDEVA 1ST RESPONDENT

SAMMY KOMEN MWAITA 2ND RESPONDENT

RULING

1. By Notice of Motion dated May 19, 2022, the applicant seeks transfer of Kakamega MCELC Number 178 of 2019 EACC -vs- Rose Mugita, from the Subordinate Court to this court, for hearing and determination.
2. The application is supported by an affidavit sworn by Ruth Ayunga, an advocate of the High Court of Kenya who is in conduct of the matter on behalf of the plaintiff/applicant. She deposed that the applicant filed the suit sought to be transferred on November 23, 2019 in the Chief Magistrate's Court at Kakamega, which court had jurisdiction to hear and determine the suit. That the suit was filed after investigations established that Kakamega Municipality Block 3/71 (the suit property) belonged to the Government of Kenya through the State Department of Housing designated as Government House No KAK/HOU/HG/10 within Kakamega Municipality for use and allocation for use as dwelling house for public servants. That during pendency of the suit, the applicant subjected the suit property to valuation and received a valuation report which indicates the value of the suit property as KShs 30,000,000. She added that the applicant is desirous of having the suit heard and determined in this court since the lower court now lacks pecuniary jurisdiction.
3. The respondents opposed the application through a replying affidavit sworn by Rose Mugita Mideva who deposed that the government valued the suit property at KShs 1.6 million as of January 24, 2007 and that the suit property could not have appreciated eighteen times. That the valuation relied on by



the applicant is not credible and that the subordinate court has jurisdiction to hear and determine the suit. She further contended that to the extent that the applicant has not sought withdrawal of the suit from the subordinate court, this court lacks jurisdiction to grant the orders sought.

4. The application was canvassed through written submissions which both sides duly filed. I have considered the application, the affidavits and the submissions. The issues that arise for determination are whether this court has jurisdiction to grant the orders sought and whether the orders sought should issue.
5. The question of whether this court has jurisdiction is tied to whether the subordinate court had jurisdiction when the suit was filed. The respondents do not dispute that the subordinate court had jurisdiction from the onset. In fact, they maintain that the subordinate court still has jurisdiction. They have however argued that the suit cannot be transferred to this court without being withdrawn from the subordinate court. There is nothing to stop this court from making an order for withdrawal if the court considers that a transfer is appropriate. I find that the court has jurisdiction to grant the orders sought.
6. The applicant has contended that the subordinate court had jurisdiction when it filed the suit and that a subsequent valuation report put the value of the suit property at KShs 30,000,000 which is beyond pecuniary jurisdiction of the subordinate court. I see no prejudice that will be occasioned to the respondents if the suit is transferred to this court. On the other hand, the applicant may suffer substantial loss if it later turns out that the value of the suit property is in fact beyond the pecuniary jurisdiction of the subordinate court.
7. I find merit in the application. I make the following orders:
 - a. Kakamega MCELC Number 178 of 2019 EACC -vs- Rose Mugiita is hereby withdrawn from the Subordinate Court and is transferred to this court for hearing and determination.
 - b. Costs of Notice of Motion dated May 19, 2022 shall be in the transferred suit.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 21ST DAY OF JUNE 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Bii holding brief for Ms Ayunga for the applicant

No appearance for the first respondent

No appearance for the second respondent

Court Assistant: E. Juma

