



REPUBLIC OF KENYA



Oloo (Suing as the Legal Administrator of the Estate of Thomas Ogutu Oduor alias Oduor Ogutu - Deceased) v Okech & 4 others; Land Registrar Ugenya/ Ugunja District (Interested Party) (Environment and Land Miscellaneous Application E003 of 2023) [2023] KEELC 18059 (KLR) (19 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18059 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2023**

AY KOROSS, J

JUNE 19, 2023

BETWEEN

JOHN ODUOR OLOO (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF THOMAS OGUTU ODUOR ALIAS ODUOR OGUTU - DECEASED) APPLICANT

AND

ERICK OUMA OKECH 1ST RESPONDENT

SYLVESTER ONJIJO SUDHE 2ND RESPONDENT

ALICE ODHIAMBO 3RD RESPONDENT

STANLEY MOMBO AMUTI 4TH RESPONDENT

AGNESS ADHIAMBO 5TH RESPONDENT

AND

LAND REGISTRAR UGENYA/UGUNJA DISTRICT INTERESTED PARTY

RULING

1. The notice of motion that is the subject of this ruling is dated February 8, 2023. The court has been moved pursuant to Sections 1A, 1B, 18, 63 (e) and 89 of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules*. The applicant has sought the following substantive reliefs:-
 - a) Ukwala ELC Case Number E16 of 2020 be transferred to this court for further proceedings; and
 - b) Costs be in the cause.



2. The motion was based on grounds set out on its face and on the supporting affidavit of the applicant's counsel Mr Charles Odhiambo Odera sworn on February 8, 2023.
3. In summary, the applicant instituted Ukwala PM ELC case no E16 of 2020 against the respondents over land parcels no Uholo/Sigomere/1065, 1066, 1068, 1625 and 1626 ('the suit properties'). A valuation report prepared subsequent to filing suit established the value of the suit properties were Kshs 22,300,000/-. This was beyond the pecuniary jurisdiction of the Trial Magistrate. Consequently, the case should be transferred from the subordinate court to a court of competent jurisdiction.
4. Despite service, neither the respondents nor the interested party participated in these proceedings. Notwithstanding the motion was unopposed, this court has to determine its merits and evaluate it based on provisions of law and legal principles.
5. Having carefully considered the motion, affidavit and annexures thereto, the single issue for determination is whether the applicant should be granted the orders sought.
6. The jurisdiction of Magistrates' courts is laid out in the *Magistrates' Courts Act*. Its pecuniary jurisdiction is specifically provided for in Section 7(1) of the same Act which provides: -

' A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—

- (a) Twenty million shillings, where the court is presided over by a chief magistrate;
- (b) Fifteen million shillings, where the court is presided over by a senior principal magistrate;
- (c) Ten million shillings, where the court is presided over by a principal magistrate;
- (d) Seven million shillings, where the court is presided over by senior principal magistrate; or
- (e) Five million shillings, where the court is presided over by a resident magistrate.'

7. From the proceedings, it is evident the Trial Magistrate who was and still is a Principal Magistrate had a limited pecuniary jurisdiction of Kshs 10,000,000/=. Being alive to lack of jurisdiction, the Trial Magistrate rightfully so, divested herself suo motu on February 3, 2021. The Trial Magistrate directed the parties to transfer the suit to a court of competent jurisdiction hence the instant motion.
8. This court has an equal status with the High Court. Its jurisdiction to transfer a suit is anchored on Section 18 of the *Civil Procedure Act* 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.'

9. In the case of [Phoenix of EA Assurance Company Limited v SM Thiga t/a Newspaper Service \[2019\] eKLR](#), the Court of Appeal held as follows:-

' Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself. The subordinate court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction.'

- 10. The Court of Appeal has affirmed the position of Phoenix of EA Assurance Company Limited (Supra) in a line of several decisions including [George C Gichuru v Senior Private Kioko & another \[2013\] eKLR](#), [Kinyua Koeh Ltd & 2 others v Nairobi Homes \(Mombasa\) Limited & 11 others \[2015\] eKLR](#) and [Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel \[2016\] eKLR](#).
- 11. Transfer or withdrawal of a suit in accordance with Section 18 of the [Civil Procedure Act](#) is pegged on the presupposition that the court from which a suit is being transferred or withdrawn from has jurisdiction in the first instance to entertain it.
- 12. In our case herein, the Trial Magistrate did not have pecuniary jurisdiction to hear and determine the suit. In other words, the suit was a nullity. The transfer of an incompetent suit would sanitize an incompetent suit. This would make this court complacent to an irregularity. There did not exist a competent suit capable of being transferred.
- 13. The applicant has not satisfied this court that he warrants the grant of the orders sought. It is my finding Ukwala PM ELC case no E16 of 2020 was a nullity since the Trial Magistrate was bereft of jurisdiction. Consequently, it is my finding the motion was not merited.
- 14. The upshot of the foregoing is that the motion dated February 8, 2023 is not allowed and is hereby dismissed. It is trite law costs follow the event. For the reasons the respondents and interested party did not participate in these proceedings, the applicant shall bear his own costs of the motion. The file is marked as closed.



15. It is so ordered.

DELIVERED AND DATED AT SIAYA THIS 19TH DAY OF JUNE 2023.

HON. A. Y. KOROSS

JUDGE

19/6/2023

Ruling delivered in the presence of:

N/A for parties.

Court assistant: Ishmael Orwa

