



Ram Equity Limited v Kinyei (Environment and Land Civil Miscellaneous Application E007 of 2022) [2023] KEELC 18197 (KLR) (16 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18197 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND CIVIL MISCELLANEOUS APPLICATION E007 OF 2022**

EM WASHE, J

JUNE 16, 2023

BETWEEN

RAM EQUITY LIMITED APPLICANT

AND

SAMUEL RIOPA KINYEI RESPONDENT

RULING

1. The Applicant herein filed a Notice of Motion application dated October 25, 2022 (hereinafter referred to as 'the present application') seeking for the following Orders; -
 - i. The Honourable Court be pleased to withdraw and transfer Kilgoris Pmcc Elc No E027 OF 2022 touching and/or pertaining to ownership and/or title of LR notransmara/Kerinkani/678 to this Honourable Court for hearing and final disposal in terms of the provisions of Section 7 and 13 of the *Environment and Land Court Act*, No 19 of 2011.
 - ii. Costs of this Application do abide the cause.
 - iii. Such further and/or other orders be made as the court may deem fit and expedient.
2. The grounds in support of the above prayers are outlined in the body of the present application and expounded in the supporting affidavit of one Ashwin Ramji Gudka sworn on the October 25, 2022.
3. In a summary, the reasons for seeking the above orders can be outlined as follows; -
 - a. There is a dispute between the parties herein touching the property known as LR NO Transmara/Kerinkani/678 (hereinafter referred to as 'the suit property') which requires to be adjudicated by the Environment and Land Court established by the *Environment and Land Court Act* No 19 of 2011.



- b. The suit property in dispute measures approximately 51.9 Acres with a current valuation being Kshs 500,000/- per acre.
 - c. Consequently therefore, the total value of the suit property is estimated to be Kshs 25,900,000/-.
 - d. Unfortunately, the proceedings known as Kilgoris PMCC ELC NO E027 OF 2022 were filed in a court whose pecuniary jurisdiction is limited to only Kshs 15,000,000/-.
 - e. As a result of this pecuniary jurisdiction limitation, the Court which the applicant filed the proceedings known as Kilgoris PMCC ELC NO E027 OF 2022 does not have jurisdiction to hear and determine the dispute thereof.
 - f. The Applicant's prayer is therefore to have the proceedings known as Kilgoris PMCC ELC NO E027 OF 2022 withdrawn from the lower Court and be transferred to this Honourable Court to be heard and determined accordingly.
4. The present application was duly served on the Respondent who filed a Reply Affidavit sworn on the November 29, 2022 opposing it.
 5. The Respondent opposed the present application on two main grounds which again can be summarised as follows; -
 - a. The Respondent averred that indeed there is a boundary dispute between his property known as LR NO Transmara/Keriankani/278 and the Applicant's property known as LR NO Transmara/Keriankani/678.
 - b. According to the Respondent, the proceedings known as Kilgoris PMCC ELC NO E027 OF 2022 relate to a claim of 4.2 Hectares (approximately 10 Acres) by the Applicant from the property known as LR NO Transmara/Keriankani/278.
 - c. The Respondent stated that the value of the 4.2 Hectares (approximately 10 acres) which is under litigation in Kilgoris PMCC ELC NO E 027 OF 2022 is approximately KShs 5,000,000/-.
 - d. In essence therefore, the Respondent's view was that the lower Court handling Kilgoris PMCC ELC NO E027 OF 2022 had the pecuniary jurisdiction to hear and determine the same.
 - e. Further to that, the Respondents also pleaded that the present application was incompetent as a reading of Section 18 of the Civil Procedure Act, Cap 21 Laws only allowed the transfer of suits only from Courts which have competent jurisdiction thereof.
 - f. In conclusion, the Respondent sought this Honourable Court to dismiss the said application with costs.
 6. The Applicants in response to the issue of the valuation of the property in dispute filed a Further Affidavit sworn on the February 20, 2023 attaching a Valuation report by Adomag Valuers & Associates dated January 2, 2023.
 7. According to the said valuation, the property known as LR NO Transmara/Kerinkari/678 was approximately 23,400,000/-.
 8. This Honourable Court having gone through the pleadings by both parties and the submissions filed on the March 10, 2023 (by the Applicants) and March 14, 2023 (by the Respondents), the main issue for determination is whether the proceedings known as Kilgoris PMCC ELC NO E027 OF



- 2022 should be withdrawn from the Lower Court and transferred to this Court for hearing and determination.
9. The Applicant has invoked the provisions of Order 51 Rules 1,2 and 3 of the Civil Procedure Rules, Sections 1A, B, 3, 3A and 18 of the [Civil Procedure Act](#), Cap 21 Laws of Kenya.
 10. Further to that, the Applicant also invoked Sections 7 and 13 of the [Environment and Land Court Act](#), Cap 19 of 2011 as well as Articles 48,159(2) and 162(2) of the Kenyan [Constitution, 2010](#).
 11. A perusal of the [Civil Procedure Rules, 2010](#) informs the Court that Order 51 substantively deals with the manner a litigant can approach the Court through an Application and how the Court should deal with such applications.
 12. Unfortunately, Order 51 of the Civil Procedure Rules,2010 does not deal with the issue of withdrawal and transfer of pending proceedings.
 13. Such Applications for withdrawal and transfer of pending proceedings is provided under Section 18 of [Civil Procedure Act](#), Cap 21 Laws of Kenya which reads as follows: -
 - (1) 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’.
 14. Indeed, Section 18 of the [Civil Procedure Act](#), Cap 21 Laws of Kenya grants the High Court of Kenya and by extension this Honourable Court by virtue of Article 162 of the Kenyan Constitution, 2010 to deal with applications of withdrawal and transfer of pending proceedings.
 15. It is also not in dispute that the dispute between the parties herein is one within the jurisdiction of the Environment and Land Court as provided under Section 13 of the [Environment and Land Court Act](#), No 19 of 2011.
 16. The issue of withdrawal and transfer of pending proceedings has been dealt with by other courts within our jurisdiction.



17. In the case of Ali Abdi Sheikh-versus- Edward Nderitu Wainaina (Others)(supra), the Honourable Court made a finding as follows; -

' Since the plaintiff had filed a suit in respect of a claim to land whose value exceeded Kshs 500,000.00 in the subordinate court the suit could not be transferred since the general powers of the court to transfer suits under section 18 of the *Civil Procedure Act* cannot be exercised in a matter where the suit was filed in a court without jurisdiction. A similar view was taken by the same Judge in Rainbow Manufacturers Limited vs National Bank of Kenya (supra).'

18. In another litigation, the Court in the case of *Abraham Mwangi Wamigwi -versus- Simon Mbiriri Wanjiku & Another (2012) eKLR* held as follows; -

' The law relating to transfer of suits from subordinate Courts to the High Court or any transfer for that matter is very clear. In *Kagenyi vs Musiramo (supra)*, Sir Udo Udoma, CJ made it clear that an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it.

19. Turning to the present application, the question that begs to be answered is whether or not the proceedings known as Kilgoris PMCC ELC NO E027 OF 2022 were filed in a Court of competent jurisdiction or not.

20. According to the Applicant, the proceedings known as Kilgoris PMCC ELC E 027 OF 2022 was filed in a Court that lacked pecuniary jurisdiction.

21. On the other hand, the Respondent is of the view that the proceedings known as Kilgoris PMCC ELC NO E027 OF 2022 were filed in a Court with pecuniary jurisdiction because it only relates to a dispute dealing with 4.2 Hectares and not the entire property known as LR No transmara/Kerinkari/678.

22. To settle the issue of jurisdiction, this Honourable Court has to refer to the cause of action contained in the proceedings known as Kilgoris PMCC ELC NO E027 OF 202 as well as the reliefs sought therein.

23. According to the Complaint annexed to the present Application by the Applicant, the cause of action in the proceedings known as Kilgoris PMCC ELC NO E027 OF 2022 is outlined in paragraph 8 of the Complaint dated August 18, 2022.

24. Paragraph 8 of the Complaint dated August 18, 2022 reads as follows; -

'Notwithstanding that the boundary of LR NO Transmara/Kerinkani/278, on one hand and the suit property, on the other hand are distinct and discernable, the Defendant herein encroached onto a portion of the suit property sometimes in the year 2018 or thereabout measuring approximately 4.2 Hectares and started laying claim and/or insisted that the portion thereof was part of LR NO Transmara/Kerinkani/278 and not the suit property, albeit without authority of the Plaintiff, whatsoever.'



25. This Honourable Court also perused the reliefs sought in the Plaintiff dated July 18, 2022 regarding the proceedings known as Kilgoris PMCC ELC NO E027 OF 2022 and wish to reproduce the second prayer as follows; -

'ii. Declaration that the portion of LR NO Transmara/Kerinkani/678 measuring 4.2 Hectares or thereabout which is being claimed by the Defendant herein is part of what comprises LR NO Transmara/Kerinkani/678.'

26. Referring to the cause of action contained in Paragraph 8 of the Plaintiff dated July 18, 2022 and the relief sought in prayer 2 thereof, it is the Honourable Court's considered view that the dispute between the Applicant and the Respondent is a portion of 4.2 Hectares (10 Acres) and not the entire property known as LR NO Transmara/Kerinkani/678.

27. It is not a disputed fact that the Applicant is the registered owner of the property known as LR NO Transmara/Kerinkani/678 and the Respondent is the registered owner of LR NO Transmara/Kerinkani/278.

28. The only dispute between the Applicant and the Respondent is who should be in occupation of the 4.2 Hectares (10 acres) currently utilised by the Respondent yet the Applicant believes is within LR NO Transmara/Kerinkani/678.

29. According to the Valuation Report by ADomag Valuers & Associates, the value of the Applicant's property known as LR NO Transmara/Kerinkani/678 is Kshs 23,400,000/- which translates to KShs 450,000/- per acre.

30. The value of the disputed 10 acres is approximately Kshs 4,500,000/- which is within the gazetted pecuniary jurisdiction of the Lower Court pegged at Kshs 15,000,000/-.

31. In essence therefore, the Applicant's prayer for the withdrawal and transfer of the proceedings known as Kilgoris PMCC ELC NO E027 OF 2022 from the Principal Magistrates Court to this Honourable Court based on lack of jurisdiction cannot be granted.

32. This Honourable Court is of the considered view that the Principal Magistrates Court has the relevant statutory and pecuniary jurisdiction to hear and determine the dispute in the proceedings known as Kilgoris PMCC ELC NO E027 OF 2022 unless otherwise ordered.

33. In conclusion thereof, the Application dated October 25, 2022 be and is hereby determined as follows;
-

A. The Notice Of Motion Dated October 25, 2022 Be And Is Hereby Dismissed With Costs To The Respondent.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 16TH DAY OF JUNE 2023.

EMMANUEL.M.WASHE

JUDGE

In the Presence of:

Court Assistant: Ngeno/Mempe

Counsel for the Applicant: Mr. Wafula

Counsel for the Respondents: Mr. Shira

