



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

CONSTITUTIONAL PETITION NO. 356 OF 2018

GITHUNGURI DAIRY FARMERS CO-OPERATIVE SOCIETY LTD...PETITIONER

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

KIAMBU COUNTY GOVERNMENT.....2ND RESPONDENT

THE CO-OPERATIVE OFFICER.....3RD RESPONDENT

HON KIGO NJENGA.....4TH RESPONDENT

GOVERNMENT COUNTY ASSEMBLY.....5TH RESPONDENT

RULING

1. This ruling relates to an application by way of notice of motion dated 8th March, 2019 filed by the County Government of Kiambu, the 1st Respondent in **Nairobi High Court Constitutional Petition No. 362 of 2018, Kiambu Coffee Growers Co-operative Union v County Government of Kiambu & 3 others**.

2. The main prayer sought in the application is an order transferring this file from this court to the High Court of Kenya at Kiambu for hearing and determination. The application also seeks the transfer to the same Court of two other related files namely **Nairobi High Court Constitutional Petition No. 356 of 2018 Githunguri Dairy Farmers Co-operative Society Ltd v Attorney General & 4 others** and **Nairobi High Court Constitutional Petition No. 357 of 2018 K-Unity Savings & Credit Co-operative Society v County Government of Kiambu & 2 others**.

3. Some parties opposed the application and others supported it.

4. In brief, the Applicant's case is that the three petitions filed in this court either challenge the entire Kiambu Co-operative Societies Act, 2018 or some provisions thereof. It is the Applicant's case that the petitioners are domiciled in Kiambu County within the local limits of the jurisdiction of the High Court at Kiambu. Further, that other petitions touching on the same subject matter have been filed at the High Court at Kiambu.

5. The Petitioner in Petition No. 362 of 2018 opposed the application through an affidavit sworn on 4th April, 2019 by its Chairman, Oren Peter Murigi. The Petitioner in Petition No. 356 of 2018 opposed the application through an affidavit sworn on 8th April, 2019 by the Chairman of its Management Committee, Charles Ndichu Mukora.

6. The case of the parties opposed to the application is that this Division (Constitutional & Human Rights Division) at any time has three to five judges handling constitutional matters and has developed practices that expedite disposal of petitions. Further, that the practice of the Division is to hear all petitions challenging the constitutionality of a statute or any other matter. Cited as examples of cases from outside Nairobi that have been heard and determined by the Division are **Robert Gakuru & Others v Governor Kiambu County & 3 others [2014] eKLR** and **Independent Policing Oversight Authority & another v Attorney General & 660 others [2014] eKLR**.

7. According to the petitioners, they have complied with the directions issued by the court and they are ready to proceed with the hearing. They therefore do not understand why the Applicant wants the matter transferred to the High Court at Kiambu.

8. The petitioners concede that there is indeed **Kiambu High Court Constitutional Petition No. 70 of 2018 GDC Savings and Credit Co-**

operative Society Limited v Attorney General & 2 others, filed at the High Court at Kiambu touching on the same subject matter. They, however, aver that the same was filed long after these petitions had been filed. It is their deposition that no other petition touching on the matter has been filed at the High Court at Kiambu.

9. According to the petitioners, the application is only meant to further delay the hearing and disposal of the petition. Specifically, the Petitioner in petition No. 356 of 2018 avers that the **“1st Respondent is forum shopping and believes that its case will meet with favour at the Kiambu High Court rather than at Nairobi.”** The petitioners also state that their petitions already have hearing dates in this Division and securing new dates at the High Court at Kiambu may result in the delay their cases.

10. The advocates for the parties filed and exchanged submissions on the application. There is no dispute that this court has jurisdiction to hear and determine the petitions which are the subject of this ruling. If any party had claimed that this court has no jurisdiction to hear and determine the petitions merely because of the issue of location, an appropriate reply would have come by way of the decision of the Court of Appeal in **Christopher Orina Kenyariri t/a Kenyariri & Associates Advocates v Salama Beach Hotel Limited & 3 others [2017] eKLR** where it was held that:-

“We must reiterate that the High Court of Kenya remains one and the same court only that it sits at different locations in the country, such as Malindi and Nairobi. The location where it sits cannot therefore affect its jurisdiction. The practice and requirements that suits be filed in particular stations of the High Court are purely for administration and convenience in the hearing and determination of suits. That is not in any way to suggest that such requirements or practice is unreasonable or unnecessary; it is intended to reduce costs of transporting witnesses from one corner of the country to another for hearing of cases and to expedite hearing and determination of suits, thus giving meaning to the overriding objective and the constitutional value in Article 159 which emphasize the need to reduce costs and delay in the hearing and determination of suits. (See *Githa v. Family Finance Building Society & Others [2013] 1 EA 75*).

The view that that filling a suit in any station of the High Court does not render the suit a nullity is further buttressed by the provisions of *Order 47 Rule 6*, which provides as follows:

“6. (1) Every suit whether instituted in the Central Office or in a District Registry of the High Court shall be tried in such place as the court may direct; and in the absence of any such direction a suit instituted in the Central Office shall be tried by the High Court sitting in the area of such Central Office and a suit instituted in a District Registry shall be tried by the High Court sitting in the area of such District Registry.

(2) The court may of its own motion or on the application of any party to a suit and for cause shown order that a case be tried in a particular place to be appointed by the court:

Provided always that in appointing such particular place for trial the court shall have regard to the convenience of the parties and of their witnesses and to the date on which such trial is to take place, and all the other circumstances of the case.”

11. In **Milkah Nanyokia Masungu v Robert Wekesa Mwembe & 2 others [2013] eKLR** the issues to be considered in an application such as this one were listed as follows:-

“[22] The authority of the High Court to transfer cases should be exercised in the interest of justice without unnecessary limitations. See case of *Matayo K. Kaboha v Abibu Bin Abdalla and Others (1936-51)*, 6 U.L.R. 121. In transferring a case to the appropriate court for disposal, the High Court will not be deciding on a substantive issue in the case; it is simply exercising its power to transfer cases as a superior court. That power, it bears repeating, is a constitutional power vested in the High Court, and should not be limited by a practice of by-gone years: which is out of tune with our Constitution. What is imperative is for the court to pay homage to the Constitution by developing strong deprecation against any position that negates the demands of the Constitution. It is the kind of legal evolution that is necessary in any country that is advancing in the polity of legal, socio-political and economic realities.

[23] At this point, it is important to state that the principal considerations in an application of this nature include:

- a) Constitutional principles**
- b) Balance of convenience,**
- c) Questions of expense,**
- d) Interest of justice;**
- e) Nature of claim**
- f) Is there a possibility of undue hardships?**
- g) Is court in doubt on whether to grant a transfer?”**

12. The case of **Robert Gakuru & others v Governor Kiambu County & 3 others [2014] eKLR** was cited as having been heard by the Division although it originated from the County of Kiambu. However, it is observed that it is not stated in the judgement that there was an application to transfer the consolidated petitions to the High Court at Kiambu. I cannot therefore speculate on what the trial Judge would have done if such an application had been made.

13. As for the case of **Independent Policing Oversight Authority & another v Attorney General & 660 others [2014] eKLR**, it is clear on the face of the judgment that petitions had been filed in the High Court at Nairobi, Meru, Malindi, Kakamega, Eldoret, Nakuru, Kericho and Embu challenging the recruitment of police officers in a countrywide exercise. It was therefore logical to consolidate the matters and have all of them heard by a single judge. Any judge could have heard the matter and Nairobi due to its centrality was obviously the most ideal location for hearing matters.

14. Turning back to the instant application, it is clear that the petitioners are all based at Kiambu County. The law they challenge was enacted by the County Assembly of Kiambu and is only applicable within County of Kiambu. The petitions are yet to be heard. It is possible that the petition filed at the High Court at Kiambu could have been filed after the petitions filed at the High Court at Nairobi. However, the fact of the matter is that there is now a petition at the High Court at Kiambu which should be consolidated with these petitions and heard by the same judge. The serious but unsubstantiated allegation by the Petitioner in Petition No. 356 of 2018 that the Applicant is forum shopping does not deserve any comment.

15. All the factors point to the conclusion that this is a matter for the High Court at Kiambu. The application for transfer is successful in the circumstances. I therefore direct that the petitions be transferred to the High Court at Kiambu for hearing and disposal. The Deputy Registrar of this Court is directed to ensure compliance with the orders. The costs of the application shall abide the outcome of the three petitions.

Dated, signed and delivered at Nairobi this 20th day of December, 2019.

W. Korir,

Judge of the High Court