



Ndung’u (Suing on behalf of the family of Kaninu wa Nyaga namely; Njoroge & 11 others) v County Government of Kiambu the successor of the defunct Kiambu County Council & 4 others (Miscellaneous Application E013 of 2023) [2023] KEELC 20923 (KLR) (16 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20923 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS APPLICATION E013 OF 2023**

**BM EBOSO, J
OCTOBER 16, 2023**

BETWEEN

HOSWEL MUIRURI NDUNG’U (SUING ON BEHALF OF THE FAMILY OF KANINU WA NYAGA NAMELY; JACKSON KAMAU NJOROGE PATRICK KIMANI WAWERU GODFREY KANINI KAMAU MBOCHUA NYAGA ROSE GRACE WANJIKU MBOCHA HELLEN WANJIKU KIARIE SAMUEL KANINU KINUTHIA ALICE WANGUI NDUNGU THOMAS NDUNGU GITAU HANNAH WANGUI NGIGE JOHN NDUNGU NGUGI) PLAINTIFF

AND

**COUNTY GOVERNMENT OF KIAMBU THE SUCCESSOR OF THE DEFUNCT KIAMBU COUNTY COUNCIL 1ST DEFENDANT
GIKAMBURA PRIMARY SCHOOL 2ND DEFENDANT
PCEA CHURCH 3RD DEFENDANT
GICHURU MEMORIAL HIGH SCHOOL 4TH DEFENDANT
NATIONAL LAND COMMISSION 5TH DEFENDANT**

RULING

1. Falling for determination in this ruling is the notice of motion dated 25/1/2023, brought by Hoswel Muiruri Ndung’u [the applicant]. Through the motion, the applicant seeks an order transferring Kiambu MCELC Case No 77 of 2019 from Kiambu Chief Magistrate Court to the Environment and Land Court at Thika. The application is premised on the grounds outlined in the motion; in the applicant’s supporting affidavit sworn on 25/1/2023; and in the supplementary affidavit sworn by Samwel Ayieko on 16/6/2023. It was canvassed through oral submissions in the virtual court.



2. The case of the applicant is that he originally filed his claim at the ELC Division Registry of the High Court at Nairobi as Nairobi High Court E & L Case No. 459 of 2014. Upon full operationalization of the Milimani Environment and Land Court Registry, the suit was transferred to the said Registry. The Milimani Environment and Land Court subsequently transferred the suit suo moto to the Chief Magistrate Court at Kiambu. The applicant contends that the subject matter of the dispute is land parcel number Karai/Gikambura/859 [hereinafter referred to as “the suit property”] which the defendant has subdivided into three parcels namely: (i) Karai/ Gikambura/3443; (ii) Karai/ Gikambura/ 3444; and (iii) Karai/ Gikambura/3445. The applicant further contends that one of the reliefs sought in the plaint is a plea for compensation for the suit property at the current market value. The applicant adds that he carried out a valuation of the suit property and it emerged that the value exceeds the pecuniary jurisdiction of the subordinate court which is Kshs 20,000,000. As a result of the foregoing, the applicant filed the present application. He contends that the transfer of the case to the Thika Environment and Land Court would not occasion any prejudice to the respondents.
3. The application was opposed by the 2nd, 3rd and 4th respondents through grounds of opposition filed on 9/3/2023 and a replying affidavit sworn on 27/2/2023 by Edward Muiru Njeri. Their case is that the application is misconceived and bad in law as no competent suit exists capable of being transferred. The 2nd to 4th respondents contend that the applicant has conceded that the subordinate court lacks jurisdiction to determine the suit before it, hence the suit in the subordinate court is a nullity which cannot be cured by transferring it to this court. The 2nd to 4th respondents further contend that the application is an attempt to validate an incompetent suit and is an afterthought, adding that it was brought after they raised a preliminary objection on the court’s lack of jurisdiction at the subordinate court. The 2nd, 3rd and 4th respondents add that the applicant has not provided any details of the suit that was filed at the High Court. They further argue that it was incumbent upon the applicant to file the suit before a court with competent jurisdiction.
4. I have considered the application, the responses to the application and the parties’ respective submissions. I have also considered the relevant legal frameworks and jurisprudence. The single question to be determined in the application is whether the applicant has satisfied the criteria upon which an order for transfer of a suit is granted under Section 18 of the [Civil Procedure Act](#).
5. The reasons tendered by the applicant in seeking to secure a transfer order is that the suit was originally filed in the Environment and Land Division Registry of the High Court at Milimani, adding that the Milimani Environment and Land Court [the successor court to the Milimani High Court Environment and Land Division] suo motto transferred the suit to the Chief Magistrate Court at Kiambu.
6. My understanding of this application is that the applicants are essentially seeking a review of the suo motto transfer order that was made by the Milimani Environment and Land Court. They want the order reviewed so that the file is redirected to Thika Environment and Land Court instead of the Kiambu Chief Magistrate Court. In my view, the proper Environment and Land Court Registry and station where the application for review should be lodged and prosecuted is the Milimani Environment and Land Court Registry and station. This is the Environment and Land Court Registry and Station where the suo motto transfer order was issued.
7. Consequently, I will strike out the miscellaneous application dated 25/1/2023 without venturing into its merits and let the applicant file a proper application at the Milimani Environment and Land Court Registry and Station for a review of the *suo motto* transfer order. Taking into account the contention that it is the Milimani Environment and Land Court that has put the parties in their current situation, parties will bear their respective costs of this miscellaneous application. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH DAY OF
OCTOBER 2023**

B M EBOSO

JUDGE

In the Presence of: -

Mr Munene for Applicants

Mr Isahi for the 2nd, 3rd and 4th Respondents

Court Assistant: Osodo/ Hinga

