



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

MISC APPLICATION NO. E004 OF 2022

FELIX MWANGI MUHINDI.....APPLICANT

=VERSUS=

CHARLES NJOROGE KAHURIA (*Being sued as the Administrator of the*

Estate of the late KARANJA THIONG'O GATHUNGU).....1ST RESPONDENT

MARY NJUGUNA MBUGUA (*Being sued as the Administrator of the*

Estate of the late KARANJA THIONG'O GATHUNGU).....2ND RESPONDENT

DISTRICT LAND REGISTRAR THIKA.....3RD RESPONDENT

RULING

1. Through a notice of motion dated 12/1/2022, the applicant invited this court to exercise jurisdiction under Section 18 of the Civil Procedure Act and issue an order transferring **Thika E & L Case No 25 of 2014** to this Court, for hearing and determination. The application is accompanied with a supporting affidavit sworn on 12/1/2022 by the applicant. The case of the applicant was that he filed **Thika CMC E & L Case No 25 of 2014** in 2014 seeking, among other reliefs, an order of injunction restraining the respondents against trespassing on, entering, encroaching on or dealing with land parcel number **Ruiru Kiu/Block 2 (Githunguri) 3637**. In September 2020, he amended his plaint and pleaded for an alternative relief in form of compensation equivalent to the market value of the suit property.
2. The appellant contended that in June 2014, the value of the suit property was Kshs 20,000,000. He added that as at the time of filing this application, the value of the suit property was over Kshs 25,000,000, which was beyond the jurisdiction of the Chief Magistrate Court.
3. The 1st and 2nd respondents opposed the application through grounds of opposition dated 24/1/2022. They contended that the application was a delaying tactic by the applicant, adding that the matter had been in the Chief Magistrate Court for over 7 years. They added that the valuation report relied upon by the applicant was dated 17/6/2014, which was 11 days after the filing of the said suit in the Chief Magistrate Court yet the applicant had never raised the issue of jurisdiction for the last 7 years.
4. Parties filed rival submissions dated 16/2/2022 and 24/1/2022 respectively. No specific past decisions were cited by the parties. I have considered the rival submissions. The single question to be answered in this application is whether there is a proper legal and factual basis upon which to exercise the jurisdiction to transfer the suit pending in the Chief Magistrate Court to this court.
5. It is now settled law that where a suit is filed in a court that does not have jurisdiction, that suit is a nullity *ab initio*. Not too long ago, the Court of Appeal reiterated this principle in **Phoenix of E.A Assurance Company Limited v S. M Thiga t/a Newspaper Service [2019] eKLR** in the following words:

“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.”

6. It is not clear from the papers presented to the court what the exact value of the suit property is at this point in time. No current valuation report was exhibited to inform the court on the current value of the suit property. The valuation report which was exhibited is dated June 2014. The said report estimated the value of the suit property at Kshs 20,000,000 as at June 2014. This suit was filed in the Chief Magistrate Court in June 2014. What that means is that at the time the applicant filed the suit in the Chief Magistrate Court, the value of the suit property was Kshs 20,000,000. The suit remained in the Chief Magistrate Court from June 2014 to date. In the absence of a current

valuation report, the rebuttable presumption is that the value of the suit property is still Kshs 20,000,000 and the Chief Magistrate Court is properly seized of jurisdiction.

7. In the above circumstances, I do not think the court has a proper basis upon which to grant the transfer order sought. The result is that the application dated 12/1/2022 is struck out. The applicant will be at liberty to bring a properly supported application. Applicant shall bear costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 23RD DAY OF FEBRUARY 2022

B M EBOSO

JUDGE

In the Presence of: -

Mr Kariuki for the Applicant

Mr Thuku for the 1st and 2nd Respondents

Court Assistant: Dominic Waweru