



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA

AT EMBU

E.L.C. MISC NUMBER 22 OF 2014

NJERU KIANDE.....APPLICANT

**VERSUS**

NALEAH NJURA NDWIGA.....RESPONDENT

**RULING**

**INTRODUCTION**

By their notice of motion dated 17<sup>th</sup> October 2014, counsel for the applicant have sought an order of transfer to effect the withdrawal of Embu Chief Magistrate's Court civil case number 204 of 2012, which is pending before that court and the same be tried in the High Court. They are seeking the transfer of that suit to the High Court for trial and disposal. They have annexed a supporting affidavit to the notice of motion.

The respondent was served with the hearing notice in respect of this motion but he did not attend the hearing. The hearing therefore had to proceed in his absence.

**The Applicant's Factual Basis:**

The application for transfer is based on **Section 18(b)(ii) of the Civil Procedure Act Chapter 21, of Sections 2, 3, 4, 5 and 13 of the Environment and Land Court Act of 2011**. According to the applicant, the suit that is pending in the magisterial court raises issues of jurisdiction. He has stated in his defence that the suit raises issues of law. For example, he has stated in his written statement of defence that the suit is time barred under the Limitation of Actions Act, Cap 22 Laws of Kenya. Furthermore, he says that there was no valid contract for the sale of land. He has finally stated that the mandatory consent of the land control board was not obtained as required by law, because this was a controlled transaction.

**The Applicable Law:**

The law that governs the transfer of suits from the lower courts to the High Court is set out in **Section 18 of the Civil Procedure Act**. The provisions of that section state as follows:

***(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. re-transfer 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.*

### **Issues for Determination**

It is my considered view that the application raises the following issues for determination:

1. Whether the application has met the threshold set out in Section 18, Civil Procedure Act.
2. Who should bear the costs of this application.

### **Evaluation of the Evidence, the Law and Submissions**

A perusal of the written statement of defence clearly indicates that there are weighty issues of law raised by the applicant. These issues relate to the validity of the contract for the sale of land. They also relate to the issue of the period of limitation, limitation because the suit land is alleged to have been bought in 1964.

Additionally, they involve the issue of the mandatory consent of the Land Control Board, because the suit land is a controlled transaction. In the circumstances, this is a fit and proper case for transfer to the High Court for determination and disposal.

### **Verdict and Disposal Order:**

In view of the foregoing:

1. I hereby grant the order to transfer the case from the magisterial court to the High Court in terms of prayer number 2 of the notice of motion.
2. The costs of this application shall be costs in cause.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this....15<sup>th</sup>.....day of.....**DECEMBER, ....2014**

In the presence of

Mr M. Njage for the Applicant and in the absence of the Respondent

Court clerk Mr Muriithi

Right of Appeal under Order 43 explained to the parties.

**J.M. BWONWONGA**

**JUDGE**