



**Mbui v Nyiha & 2 others (Miscellaneous Civil Application  
379 of 2013) [2013] KEHC 2652 (KLR) (Civ) (30 May 2013) (Ruling)**

*FREDRICK KARANJA MBUI V SIMON NDICHU NYIHA & 2 OTHERS [2013] eKLR*

Neutral citation: [2013] KEHC 2652 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**MISCELLANEOUS CIVIL APPLICATION 379 OF 2013**

**EKO OGOLA, J**

**MAY 30, 2013**

**BETWEEN**

**FREDRICK KARANJA MBUI ..... APPLICANT**

**AND**

**SIMON NDICHU NYIHA ..... 1<sup>ST</sup> RESPONDENT**

**DA OKUNDI – PRINCIPAL MAGISTRATE KIAMBU ..... 2<sup>ND</sup> RESPONDENT**

**THE JUDICIAL SERVICE COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application before the court is a Notice of Motion dated 4<sup>th</sup> July 2012 filed under Sections 1, 1A, 3, 3A, 18 (i), (b) and 63 (e) of the *Civil Procedure Act*, Order 1 Rule 10 and Order 51 Rules 1 of the *Civil Procedure Rules* 2010.
2. The application seeks the following orders namely:-
  - a) That Civil Suit No. 83 of 2011 in the Chief Magistrates Court at Kiambu between Fredrick Karanja Mbui (Plaintiff) and Simon Ndichu Nyiha (Defendant) be transferred to the High Court in Nairobi for hearing and final disposal.
  - b) That motor vehicle registration number KBB 577A be released forthwith to the Applicant at no costs as ordered on 5/9/2011 by the Learned Hon. Chief Magistrate Mrs. C.W. Meoli (now a Judge of the High Court).



- c) That the following persons having not been formerly granted leave to join the suit in issue be declared non parties and strangers in Civil Suit No. 83 of 2011 at the Chief Magistrates Court at Kiambu between the Applicant and the 1<sup>st</sup> Respondent.
- (i) Rahab Muthoni Kabari
  - (ii) Francis Muchiri Gikang'a (deceased)
  - (iii) Peter Githirwa Waweru
  - (iv) Stanley T. Mugacha
- d) That all documents filed by, for and on behalf of Rahab Muthoni Kabari, Francis Muchiri Gikang'a (deceased), Peter Githirwa Waweru and Stanley T. Mugacha in Kiambu CMCC No. 83 of 2011 be expunged and declared null and void.
- e) That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents be restrained from further joining or entertaining other strange parties in the suit between the Applicant and the 1<sup>st</sup> Respondent without that party first seeking leave of the Court.
- f) That costs be provided for.
3. The application is premised on the grounds set out therein and by the affidavit of the Plaintiff dated 4<sup>th</sup> July 2012 together with annexures thereto.
4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have not responded to the application while the 3<sup>rd</sup> Respondent opposed the application through the submissions of his counsel M/s Mutua.
5. The application before the court relates to the suit in the Chief Magistrates Court at Kiambu Civil Suit Number 83 of 2011. The Applicant seeks the said suit to be transferred to this court for disposal, among other orders. The Applicant alleges that there is no transparency in the proceedings before the court in Kiambu and that conflicting orders have been given causing the Applicant to lose faith of a fair hearing of the matter before that court.
6. Mr. Maina, counsel for the Applicant relied fully on the application and supporting affidavit.
7. On her part M/s Mutua for the 3<sup>rd</sup> Respondent submitted that the 3<sup>rd</sup> Respondent, the Judicial Service Commission, was not a party to the Kiambu court matter and has been illegally joined to these proceedings. She submitted that the 3<sup>rd</sup> Respondent does not carry out judicial functions, the same being the reserve of judicial officers. If the Applicant was aggrieved by the decision of the Kiambu court in Civil Suit Number 83 of 2011, then the simple thing to do was to seek an appeal rather than this back door appeal.
8. I have carefully considered the application and the opposing submissions of the parties. The only issue for the determination by this court is whether or not this court can transfer the Civil Suit Number 83 of 2011 from Kiambu Chief Magistrate's Court to this court.
9. It is true that the High Court has supervisory powers and jurisdiction over the lower court. This power is exercisable with caution and only where the inferior court has exceeded its jurisdiction or where a party's constitutional rights are being or about to be abrogated through the process in that inferior court.
10. However, there is no power granted to this court to transfer a matter from an inferior court to this court simply because the Applicant is unhappy with the decisions made by the inferior court. In such circumstances the option for the Applicant is to appeal to this court through the normal appellate



procedure. This application, if granted, would amount to this court giving appellate reliefs to party through the back door.

11. I have also noted that the joinder of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to this application is mischievous. Section 6 of the *Judicature Act* protects judicial officers and grants immunity to judicial officers in the exercise of their judicial functions. The 2<sup>nd</sup> Respondent cannot then be joined to this application which finds fault with the manner in which the 2<sup>nd</sup> Respondent performs his judicial duties. His alleged faults, if any, can only be challenged through an appellate process sanctioned by the law.
12. As for the 3<sup>rd</sup> Respondent it is obvious that it handles only employment and disciplinary issues of judicial officers. Although Article 172 of the *Constitution* provides that one of the functions of the 3<sup>rd</sup> Respondent is to ensure that there is a transparent administration of justice, that requirement does not operate to allow the 3<sup>rd</sup> Respondent interfering with judicial officers decisions which are directly challengeable only through the process of appeal provided for in the law.
13. In the upshot the application before the court is incompetent in its entirety and I herewith dismiss it with costs to the 3<sup>rd</sup> Respondent.

It is so ordered.

**DATED, READ AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF MAY 2013 E. K. O. OGOLA  
JUDGE**

PRESENT: Ndirangu for the Applicant M/s Mutua for the 3<sup>rd</sup> Respondent

Teresia – Court Clerk

