



**Stanley & another v Mwongera & 5 others; Rutere & another (Interested Parties)  
(Environment & Land Case 151 of 2017) [2022] KEELC 2948 (KLR) (11 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2948 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 151 OF 2017**

**CK NZILI, J**

**MAY 11, 2022**

**BETWEEN**

**JANE KANARIO STANLEY ..... 1<sup>ST</sup> PLAINTIFF**

**JOCELYN KINANU MWIRICHIA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CLIFFORD MWONGERA ..... 1<sup>ST</sup> DEFENDANT**

**JOHN K MWIRICHIA ..... 2<sup>ND</sup> DEFENDANT**

**KIMATHI S. MWIRICHIA ..... 3<sup>RD</sup> DEFENDANT**

**RUTH NDURU STANLEY ..... 4<sup>TH</sup> DEFENDANT**

**DAVID MUGO ALIAS WILLIAM MITHIKA MUGO ..... 5<sup>TH</sup> DEFENDANT**

**MUTHURI RUFUS M'RINGERA ..... 6<sup>TH</sup> DEFENDANT**

**AND**

**CHARLES RUTERE ..... INTERESTED PARTY**

**JULIA KANANU NKURU ..... INTERESTED PARTY**

**RULING**

1. This ruling relates to the applications dated 16.11.2020 and 26.2.2021 by the interested parties and the preliminary objection dated 2.3.2021.
2. In the 1<sup>st</sup> application by the plaintiffs, the court is asked to consolidate the Meru CMCC No. 194 of 2018 with this case for hearing and determination on the basis that the suits are the same over the same, subject matter, and it would be in the interest of justice to avoid conflicting judgments as well as for the expeditious disposal of the cases. The application is supported by the 1<sup>st</sup> plaintiff's sworn affidavit



on 16.11.2020 attaching a plaint in CMCC no. 194/18, the application by the interested parties and statements thereof as annexures marked JK 1-3 respectively.

3. The grounds are that the lower court has requisite jurisdiction to hear and determine the matter, no valuation report has been provided to establish that the suit is beyond the pecuniary jurisdiction of the Githongo law courts, the matter will cause unnecessary jam in an already overwhelmed court and that the law allows the matter be filed at the said court.
4. The application is supported by the affidavit sworn on the even date by Charles Nkuru Rutere deposing that the subject matter revolves around a breach of a contract of sale between the interested parties and the 1<sup>st</sup> defendant for a property estimated at Kshs.7.5 million; a commercial dispute and an ELC matter cannot be consolidated by this court; there will be misjoinder of issues; transfer of this matter would not prejudice any party; the appellants were forum shopping; an old matter should be transferred there since the calendar for Githongo law courts was more accommodating as opposed to this courts agonizing diary and lastly that it was in the interest of justice to allow for the transfer.
5. In the 2<sup>nd</sup> application dated 26.2.2021, the interested parties pray that the suit herein be transferred to SPMCC Githongo for disposal.
6. Charles Nkuru Rutere the interested party and proponent of the 2<sup>nd</sup> application has opposed the 1<sup>st</sup> applicants through a replying affidavit sworn on March 2, 2021 ideally on the same reason as in the application dated 26.2.2021. Over and above the grounds in the 2<sup>n</sup> application the 1<sup>st</sup> interested parties states the agreement of sale was executed in Meru town whereas the suit land was situated in Githongo law courts, jurisdiction, the court should not be overburdened by a suit which can be handled by the lower court; to do so is to play to the antics of the plaintiffs out to mislead and are in bad faith to defeat the cause of justice who are immediate family members out to frustrate the sale agreed by their brother the 1<sup>st</sup> defendant.
7. Regarding the preliminary objection dated 2.3.2021 the interested parties aver the court lacks the necessary jurisdiction to entertain hear and determine both the application and the suit and that the application was bad in law, an abuse of the court process and fatally defective. The court was therefore asked to strike out both the suit and the application with costs.
8. By a replying affidavit sworn on 29.6.2021 by Mercy Kaume advocate for the plaintiffs to the applications dated 26.2.2021, she termed the application as malicious, in bad faith and lacking merits.
9. She averred the issues in the two suits could be determined together and that the interested parties filed the suit while aware of this suit. Further counsel averred an acre was about one million current price hence the suit was within the jurisdiction of this court and the rush to Githongo law court was suspect and a shot cut so as to defeat the purpose of the suit. Counsel averred that the court should stay CMCC No. 194 of 2018.

### **History of the suit**

10. This suit was filed on 12.5.2017 by the plaintiffs against the 1-6 defendants regarding L.R No. Abothuguchi/Mariene/980 claiming customary trust by the 1<sup>st</sup> defendant, unlawful transfer to 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants out of NRB Succession cause no. 11938/01 and interference with a genuine transfer to the 4<sup>th</sup> defendant holding the same in trust for the plaintiff. The plaintiffs sought for a declaration of the trust and cancellation of the resultant subdivisions and title deeds. The plaint was eventually amended on 30.5.2017 to bring on board a prayer for a permanent injunction.



11. The 1<sup>st</sup> defendant filed a defence and counterclaim dated 15.6.2017. He prayed for injunction and declaration that the plot belonged to him as well as general damages for loss of business and user of the land.
12. Similarly through an application dated 15.5.2017 interim orders were sought against the defendants which the 1<sup>st</sup> defendant opposed vide a replying affidavit sworn on 23.5.2017 claiming that L.R no. 980 did not form part of the deceased estate but had been transferred to him in 1995 and a title deed issued thereof in 21.9.1995 for a consideration before his late father passed on in 1998. That before the demise of his father he had subdivided all his properties and title deeds issued and that he had already sold the suit land on 25<sup>th</sup> December 2016 and was in the process of obtaining the requisite consents and transfers which the plaintiffs were seeking to frustrate.
13. In an application dated 15.6.2017, the 1<sup>st</sup> defendant sought for temporary orders of injunction against the plaintiffs. The plaintiffs filed a reply to defence and defence to the counterclaim dated 24.7.2017. Meantime the court on 11.9.2017 granted an order for a scene visit as well as status quo orders stopping any demolitions of the suit premises on 15.9.2017.
14. The 2<sup>nd</sup> and 3<sup>rd</sup> defendant came on record on 29.5.2017. The 3<sup>rd</sup> defendant on 3.11.2017 filed a replying affidavit insisting their late father and the 4<sup>th</sup> defendant, their mother had nine children and transferred most of his properties to his sons before he passed on. He attached a copy of the record for L.R Ntima/Ntakira/3085, lease, caution by the 4<sup>th</sup> defendant over LR no. 980 and a confirmed grant.
15. The 6<sup>th</sup> defendant also opposed the application through an affidavit sworn on 5.6.2017 stating he had an interest on L.R No. Abothuguchi/Mariene/980, 981, 983 or Ntima/Igoki/1797 market plots 311, 1849 and 850 Meru municipality, but had only bought plot no. 9 Kiinjo market from the 4<sup>th</sup> defendant for Kshs.60,000 which he had developed since 2003 after it was lawfully transferred to him. He also filed a defence dated 5.6.2017.
16. A scene visit report was eventually made dated 26.10.2017 and was filed in court. It confirmed that the plaintiff and 1<sup>st</sup> defendant cultivated on P/N 980, there was a main house on P/No. 980 occupied by the plaintiffs, 1<sup>st</sup> defendant had a timber house thereon, while there were other houses n P/No's 981 and 982 belonging to the 1<sup>st</sup> defendant's brothers.
17. By a ruling dated 18.7.2018 the court allowed the 2<sup>nd</sup> plaintiff to continue utilizing the suit land with no damage thereon for six months with the 4<sup>th</sup> defendant being at liberty to occupy the main house, kitchen and latrine as well as to utilize other parts of p/no 980.
18. The 1<sup>st</sup> defendant was allowed to utilize all other structures except the main house, kitchen and the chicken pen.
19. The 1<sup>st</sup> defendant was stopped from alienating the suit land until further orders of the court whereas the 1<sup>st</sup> plaintiff was stopped from utilizing any part of the suit land. All the above orders were to subsist for 6 months only. Parties meantime were directed to comply with order II Civil Procedure Rules.
20. Through chamber summons dated 9.5.2019, the interested parties herein sought to be joined as interested parties prior to hearing of the main suit, alleging that they were innocent purchasers for value over the suit land from the 1<sup>st</sup> defendant that they had sued the 1<sup>st</sup> defendant; in Meru CMCC no. 194 of 2018 for specific performance, that the 1<sup>st</sup> defendant had through collusion with the other family members had also sought to be enjoined as interested parties in Meru CMCC no. 194 of 1998. It was their contention, once enjoined they would be instrumental in pushing for the fast tracking of



the hearing and determination of this suit. The application was supported by an affidavit sworn by Charles Nkuru Rutere on 9.5.2019.

21. The interested parties eventually came on board despite opposition through the replying affidavit by the plaintiffs filed on 3.10.2019 and 15.10.2019 respectively.
22. The interested parties filed case summary, issues for determination, witness statements and list of documents all dated 10.1.2020. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> defendants also filed their list of documents dated 5.2.2020 and 22.1.2020 respectively.
23. By an application dated 3.5.2019 in Meru CMCC No. 194 of 2018 the plaintiffs advocates herein sought to have the plaintiffs joined as interested parties on the basis there was the instant suit was due for hearing on 3.7.2019 since the purported sale was over an alleged family land which had been sold without the consent or approval of the family. The said law firm attached the ruling of this court of 18.7.2018 and a defence of the 1<sup>st</sup> defendant in that CMCC suit dated 19.11.2018.

### **Written submissions**

24. With leave parties filed written submissions dated October 28, 2021 for the interested parties and November 3, 2021 for the plaintiffs respectively. The plaintiffs submitted that their application was first on time and should be allowed and that both the preliminary objection and the interested parties' application were an afterthought.
25. It was submitted the interested parties filed the lower court suit while aware of the pendency of this suit, and were sitting waiting to have this matter heard first but only changed tune after the application herein was filed.
26. The plaintiffs submitted the court should find the issues are the same and so are the parties which issues fall under the jurisdiction of this court.
27. On the other hand the interested parties have submitted that it was not practically and legally possible to consolidated Meru CMCC No. 194/2018 and the instant suit without overstepping this courts constitutional mandate in dealing with a contractual dispute.
28. On the part of the 1<sup>st</sup> defendant herein it is also quite evident in his defence in the lower court that at paragraph 5 he alluded to the pendency of this suit. Similarly at the time the interested parties herein sought to be joined as parties and filed their pleadings thereafter they did not object to the jurisdiction of this court and or raise any preliminary objection in the first instance as to the abuse of the court process or the suit being fatally defective.
29. As regards the application dated February 26, 2021 and the preliminary objection dated March 2, 2021 the same stood unopposed as to factual issues and more importantly after the plaintiffs failed to file and serve written submissions by October 26, 2021.
30. The interested parties submitted that the affidavit sworn on February 26, 2021 was sworn without authority of the plaintiffs and it offends order 19 rule 3 [Civil Procedure Rules](#) in utter disrespect to the SPMCC court Githongo.
31. Concerning the value of the suit land the interested parties submitted the averments by Mercy Kaume advocate was not based on any valuation report given in Meru CMCC No. 194/2018 there had been no objection on the pecuniary jurisdiction. The court therefore in the interest of justice should transfer the suit to Githongo law courts for determination.



## Issues for Determination

32. Having perused court file and gone through all the pleadings past decision the two applications and the preliminary objection issues for my determination are:
  - (i) If there is a pending suit in Githongo law courts or Meru CMCC court between the parties.
  - (ii) If there are basis to transfer the suits and or consolidate them as requested by the parties.
  - (iii) Whether the ELC court has jurisdiction to handle contracts for sale of land.
33. On the first issue what the interested parties have raised as a suit pending before Githongo law court is not supported by any documents at all. What appears to be pending in the lower court is the Meru CMCC no. 194 of 2018 which the court has by the annexures established it was filed after the instant suit, given the 1<sup>st</sup> defendant admitted at the lower court of its existence in the defence and counter claim dated June 15, 2017.
34. There is no dispute that the suit in the lower court was filed later than this suit and the plaintiffs as back as 3.5.2019 did not see it prudent to either stay the lower court file or apply for the consolidation of the two files.
35. In absence of any order for the transfer of the lower court suit to Githongo law courts and or a case number emanating from Githongo law courts, I find no basis to exercise my discretion and order for the transfer of this suit to the Githongo law courts.
36. Further the only issue raised by the interested parties is that the matter at Githongo law court relates to a contract for the enforcement of a sale agreement.
37. The interested parties on May 10, 2019 are the ones who sought for and were enjoined as interested parties to this file while they knew very well that there was a pending matter before the chief magistrate's court. At the time they sought and were enjoined, they did not raise the issues of the lack of jurisdiction of this court. Similarly the interested parties had stated were coming on board in order to fast track the disposal of this matter. That spirit seems to have dissipated as soon as they came on board.
38. Incidentally and strangely the interested parties now seek this suit be transferred to Githongo law courts to enjoin with a non-disclosed and non-existent suit. The interested parties filed a statement of defence issues for determination and a case summary list of documents and list of witnesses dated January 10, 2020.
39. Soon thereafter all the parties in this matter complied with Order II *Civil Procedure Rules* as at February 5, 2020 in compliance with court orders issued on July 31, 2019. On the other hand the plaintiffs in this matter appear to have, by an application dated May 9, 2019 sought to be enjoined in the CMCC No. 194 of 2018 as interested parties. The court proceeded to allow the said application. At that point in time, the plaintiffs never raised the issue of the transfer of the lower court suit to this court and for that consolidation of the two suits.
40. In my mind there has been no material placed before this court why despite the order for compliance with Order II Civil Procedure Rules made on 31.7.2019 it has taken all the parties over two years to set down the suit hearing.
41. On the issue of jurisdiction and the power of this court to handle the subject matter Mr. Ndubi advocate submitted on behalf of the interested parties that to order for the transfer of the lower court suit wherever it falls would be tantamount to overstepping the jurisdiction of this court since under article 162 (2) of the *Constitution* an ELC court cannot handle a suit over contract for sale of land.



42. I understand counsel to be saying that this is a purely commercial dispute which the ELC has no powers to handle. This in my view is, a misinterpretation of the law as it now exists.
43. Section 13 of the [ELC Act](#) grants the court the power to handle disputes relating to environment and land including specific performance, restrictions, declarations and compensations. Section 101 of the [Land Registration Act](#) 2012 as read together with section 128 and 150 of the [Land Act](#) revised edition of 2020 vests the power to hear and determine dispute actions and proceedings under the Act on the ELC. This covers contracts on land.
44. This court in [Charles Murugu Mukindia & 2 others vs Consolidated Bank of Kenya Ltd and another](#) (2022) eKLR made a finding that the ELC court is vested with jurisdiction to hear and determine matters relating to contracts on sale of land.
45. In this matter the lower court suit relates to contract of sale of land. It is therefore not true that the matter cannot be transferred here for its disposal.
46. Regarding the transfer of this suit to the lower court the court has gone through the pleadings herein vis a vis the pleadings in the lower court. The issues raised herein with respect to the interested parties are broader in scope and properly before this court.
47. This court has powers to order for transfer and consolidation of suits. Order II rule 3 (1) (h) [Civil Procedure Rules](#) allows for consolidation of suits.
48. In [Stumberg & another v Potgeiter](#) (1970) EA 323 the court held where there are common questions of law or facts in actions, having sufficient importance in proportion to the rest of each other, it would be desirable that the whole of the matters are disposed of at the same time through consolidation.
49. The Supreme Court of Kenya in [LSK vs The Center for Human Rights and Democracy](#) petition no. 14 of 2013 held the essence of consolidation was to facilitate the expeditious and efficient disposal of all disputes and to provide a frame-work for a fair and impartial dispensation of justice to the parties but was never meant to confer any undue advantage upon the party that seeks it nor to occasion any disadvantage towards the party that opposes it. In this two suits the plaintiffs have submitted that they raise same questions of facts, law involving the parties and the transactions are evident.
50. On the other hand the interested parties while admitting that the suits should be consolidated are seeking to transfer this this suit to Githongo court for its consolidation with the lower court file and for its disposal, on the basis that the court seized with jurisdiction is Githongo law courts and not this court or Meru Chief Magistrate's court notwithstanding the contract of sale of land was executed in Meru Town. The only explanation is that this court is overwhelmed and limping with back log unlike Githongo law courts where the suit land is situated
51. This court in exercising its discretion to transfer a suit under section 18 of the [Civil Procedure Act](#) requires that there be sufficient reasons to the satisfaction of the court why it should transfer a suit.
52. The principles to apply are; the balance of convenience; questions of expense, interest of justice, possibilities of undue hardship and want of jurisdiction. See [Kitbita Ngeana vs Mwaniki Kisume](#) (2018) eKLR.
53. In this suit this court has issued several orders and directives including a ruling on the status quo. A scene visit was also undertaken and a report filed. In my considered view, I do not think it would be in the interest of justice to transfer the suit from this court to another court which has not handled the matter for the parties to start all over again. The delay in prosecuting the suit lies with all the parties herein and not the court.



54. It would be easier and for the expeditious disposal of the two matters for the Meru CMCC No. 194/18 to be brought to this court for disposal given the parties herein have substantially complied with Order II Civil Procedure Rules have undertaken a scene visit and a report filed herein. All what remains is to take an appropriate direction on the hearing date.
55. In the premises the application dated November 16, 2020 is allowed, the application dated 26.2.2021 and the preliminary objection dated March 2, 2021 are hereby dismissed with costs to the plaintiffs. The Meru CMCC No. 194 of 2018 court lower court file shall be availed before this within 14 days from the date hereof for consolidation and disposal.
56. Parties to file paginated bundles within 60 days from the date hereof and thereafter to appear for taking a hearing date before court 1 on 14.6.2022.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 11<sup>TH</sup> DAY OF MAY, 2022**

**In presence of:**

No appearance

**HON. C.K. NZILI**

**ELC JUDGE**

