



REPUBLIC OF KENYA



**Ndungu v Mburu & 3 others (Environment & Land Case 58 of 2021)  
[2022] KEELC 14805 (KLR) (14 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14805 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 58 OF 2021**

**JG KEMEI, J  
NOVEMBER 14, 2022**

**BETWEEN**

**TERESIA VICTORIA WAIRIMU NDUNGU ..... PLAINTIFF**

**AND**

**JOHN NJOROGE MBURU ..... 1<sup>ST</sup> DEFENDANT**

**PETER MWANIKI MBUGUA ..... 2<sup>ND</sup> DEFENDANT**

**ONESMUS MUTURI MBURU ..... 3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR, THIKA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This suit was filed on 31/5/2021. The Plaintiff sued the Defendants seeking inter alia declaratory orders that the Plaintiff is the legal owner of the suit land Thika/MN/Block 9/904 and that the title held by the 3<sup>rd</sup> Defendant be cancelled.
2. The Plaintiff's cause of action is premised on the sale of the suit land at the disclosed price of Kshs. 14 m going by the Agreement of Sale on record.
3. On the 1/7/2022 the 3<sup>rd</sup> Defendant/Applicant filed a Notice of Motion seeking the transfer of the suit to the Chief Ruling at Thika.
4. The application is premised on the grounds that the value of subject matter is Kshs. 15m and therefore falls within the jurisdiction of the Chief Magistrate Court.
5. The application is further supported by the affidavit of the Applicant sworn on 30/6/2022 in which the deponent reiterated the contents of the application and added that no prejudice will be visited on the Respondents if the application is granted. That for the expeditious disposal of the suit, it is met and just that the suit be transferred to the Chief Ruling for hearing and determination.



6. The application was canvassed through oral arguments in open Court on the 7/11/2022.
7. Save for the Plaintiff, the Respondents supported the Applicant in their pursuit of seeking the transfer of the file to the lower Court on grounds of pecuniary jurisdiction. That the property in question is valued in the sum of Kshs. 15m and therefore within the pecuniary jurisdiction of the Chief Ruling.
8. The Plaintiff on the other hand has argued that the application has been brought to delay the hearing of the case; the Defendants are not interested in having the matter heard given that it has been adjourned three times every time at the instance of the Defendants.
9. Further that the property is worth more than Kshs. 20m though it was sold at Kshs. 15m. Counsel for the Plaintiff was of the view that the prayer sought in the Plaint for cancellation of title should be determined by this Court.
10. The single issue for determination is whether the suit should be transferred to the Chief Ruling.
11. Section 11 of the *Civil Procedure Act* stipulates where suits should be filed. It states as follows;

“Every suit shall be instituted in the Court of the lowest grade competent to try it, except that where there are more subordinate Courts than on with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any of one of such subordinate Courts:

Provided that-

  - (i) If a suit is instituted in a Court other than a Court of the lowest grade competent to try it, the magistrate holding such Court shall return the plaint for presentation in the Court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his Court; and
  - (ii) Nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate Court in the same County.”
12. Section 18 of the *Civil Procedure Act* empowers the Court to transfer suits 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) retransfer 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”.
13. The power to transfer a suit is within the discretion of the Court which discretion must be exercised and applied judiciously. In exercising discretion the circumstances of each case must be looked into and the Court must satisfy itself.
14. Factors that Courts consider before allowing transfer of suits are; motive and the character of the proceedings, the nature of the relief sought, the interests of the litigants, administration of justice and expenses incurred by the parties and the convenience of the parties to be heard at the nearest access to justice.
15. The jurisdiction of a Magistrate Court is provided for in Section 7(1) of the *Magistrates’ Court Act* provides thus-
- (1) A Magistrate’s Court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—
- a. twenty million shillings, where the Court is presided over by a Chief Magistrate;
  - b. fifteen million shillings, where the Court is presided over by a senior Principal Magistrate;
  - c. ten million shillings, where the Court is presided over by a Principal Magistrate;
  - d. seven million shillings, where the Court is presided over by a senior Resident Magistrate; or
  - e. five million shillings, where the Court is presided over by a Resident Magistrate.”
16. The subject matter of this suit is land. In the case of this application, it is evident that the value of the subject matter going by the pleadings is Kshs. 14m as shown in the Agreement on record.
17. The pecuniary jurisdiction of the Chief Ruling is below Kshs. 20 Million and in my view the suit ought to have been filed in the Chief Ruling. There is no evidence to show the land is worth more than Kshs 20 million and it behooved the Plaintiff to bring evidence in form of a Valuation Report in support.
18. In the end I am persuaded that this is a matter that ought to have been filed at the subordinate Court. The application is merited. It is allowed with no orders as to costs.
19. The suit shall be mentioned before the Chief Magistrate Thika on the November 30, 2022 for further Orders and Directions.

**DELIVERED, DATED AND SIGNED AT THIKA THIS 14TH DAY OF NOVEMBER 2022 VIA EMAIL WITH THE CONSENT OF THE PARTIES HAVING BEEN GIVEN ON THE 7TH NOVEMBER, 2022.**

**J G KEMEI**

**JUDGE**

