



Great Meru Timber Manufacturers Association v Kenya Forest Service & 3 others (Environment & Land Petition E002 of 2022) [2022] KEELC 15360 (KLR) (14 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15360 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND PETITION E002 OF 2022
CK NZILI, J
DECEMBER 14, 2022**

BETWEEN

GREAT MERU TIMBER MANUFACTURERS ASSOCIATION PETITIONER

AND

KENYA FOREST SERVICE 1ST RESPONDENT

CHIEF CONSERVATOR OF FORESTS 2ND RESPONDENT

**CABINET SECRETARY FOR ENVIRONMENT AND FORESTS 3RD
RESPONDENT**

ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. The court is asked through application dated June 15, 2022 filed by the respondents, to transfer this petition to Nairobi to be heard alongside Nyeri Constitutional Petition No E013 of 2021, Nakuru Petition No E19 of 2021 and Nairobi Constitutional Petition No E053 of 2021.
2. The 2nd prayer is to stay this matter pending the hearing and determination of the Nakuru, Nyeri and Nairobi petitions.
3. The application is based on the reasons set out on the face of the application and an affidavit of Emmanuel Kieti sworn on June 15, 2022. The grounds are that this petition was filed on February 8, 2012 while there were other pending petitions on similar issues in the said courts with the respondents appearing as such in all those matters. That in the interest and benefit of the petitioner and all stakeholders, there was need to transfer the matter to the constitutional and human rights division of the High Court in Nairobi for hearing.
4. In the supporting affidavit, the deponent has attached annexure marked EK 1- EK3 the pleadings in the other suits.



5. Annexure marked EK “1” indicates the matter in Nyeri is before the High Court EK “1” is in the ELC Court Nakuru while EK “3” is before ELC Milimani.
6. The application is brought under articles 22 (1) & (3), 159 of the [Constitution](#) and rule 3 of the [Constitution of Kenya \(Protection of Rights & Fundamental Freedoms\) Practice & Procedure Rules, 2013](#) (Mutunga Rules). Rule 17 of the [Legal Notice No 117 of 2013](#) allows a court to consolidate several petitions on such terms as it may deem just.
7. Rule 8 sub rule 2 of [Mutunga Rules](#) allows a court to transfer a petition. In [Charles Gitonga Rugoji v David Kirimi Mwitimbundu & another](#) [2021 eKLR, the court allowed a transfer in order to bring harmony in the resolution of the dispute since the issue revolved around the same subject matter.
8. As to consolidation, the court held that constitutional litigation serves to protect fundamental rights and freedoms and not to deal with all manner of disputes. The court declined to consolidate the matters and instead allowed them to run simultaneously given that one was a normal suit while the other was a constitutional petition.
9. In [Johanna Githinji and 400 others v AG and others](#) [2015] eKLR, the court was considering cases allegedly consolidated with no connection, said to have been illegal, oppressive and obstructive to the interests of the petitioners. The court declined to deconsolidate the order issued through consent of parties. The court said that determining suits together means that the issues of law and facts raised in the two suits will be considered together and that it was not necessary that one of the suits be a test suit.
10. In [Kakuzi PLC v AG and another](#) [2020] eKLR, a request was being made to transfer the petition from the Constitution to Human Rights Division of the High Court of Kenya to Malindi ELC court over the constitutionality of section 15 of the [National Land Commission Act](#), where a judgment was due on notice. The same was opposed by the respondents on account of prejudice and inconvenience under article 50(1) of the [Constitution](#) since it was going to be impossible to raise any new issues at the appeal stage resulting from the judgment.
11. The court held that rule 8 (1) of the [Mutunga Rules](#) clearly provides that a suit be filed in a court within whose the alleged violation took place though under Rule 8(2) thereon a transfer could occur on an application by a party.
12. The court cited with approval [Daniel Mugendi v Keyatta University and others](#) Civil Appeal No 6 of 2012 where the Court of Appeal held that in order to do justice, in the event where the High Court, the Employment and Labour Court or the Environment and Land Court comes across a matter that ought to be litigated in any of the other concurrent courts, it should be prudent to have the matter transferred to that court for hearing and determination since the three courts have similar and equal status and they should work in the spirit of harmonization on any necessary transfers among themselves.
13. In [Pamoja Women Development Program and others vs Jackson Wangombe and others](#) [2016] eKLR the Court of Appeal stated that courts of equal status can have direct transfer of matters amongst themselves. In [Kakuzi PLC](#) case (*supra*) the court held that it was crucial and important for the transfers to prevent conflicting decisions on the same legal issues which may embarrass the court. Further, the court said the issue of costs did not arise on account of the online/virtual hearing to minimize on legal and travel costs as the germane issue was to ensure that the litigants got fair trial in all the matters presented before a court.
14. In the present petition, the judgment in the Nairobi matter unlike in the [Kakuzi PLC](#) matter has already been determined since there is already judgment delivered on October 21, 2022 by Wabwoto, J.



15. Therefore, no useful purpose would be served by the proposed transfer. I decline to transfer the petition to Nairobi and or stay the same. The application is dismissed. Consequently, I direct a notice to issue to the petitioner to address the court on whether the petition is still sustainable given the judgment rendered in a similar petition.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 14TH DAY OF DECEMBER, 2022

In presence of:

C/A: Kananu

No appearance

HON CK NZILI

ELC JUDGE

