



**Kiura v Ireri & 6 others (Environment & Land Case 29 of 2019)
[2022] KEELC 15552 (KLR) (6 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15552 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE 29 OF 2019
A KANIARU, J
DECEMBER 6, 2022**

BETWEEN

ANTHONY NGARI KIURA PLAINTIFF

AND

ANTONY NGARI IRERI 1ST DEFENDANT

ZIPPORAH RWAMBA KABIRUCHI 2ND DEFENDANT

SARAH NJOKI KIURA 3RD DEFENDANT

HARON NJERU KIURA 4TH DEFENDANT

THE LAND ADJUDICATION OFFICER, MBEERE 5TH DEFENDANT

THE LAND REGISTRAR, MBEERE 6TH DEFENDANT

THE ATTORNEY GENERAL 7TH DEFENDANT

RULING

1. I am called upon to determine a notice of motion dated January 28, 2022 filed in court on February 1, 2022 by the applicant. The application is expressed to be brought under sections 18(1)(b)(ii) and 3A of the [Civil Procedure Act](#) and Order 51 rule 1 of the [Civil Procedure Rules 2010](#).

Application

2. The parties in the application are Anthony Ngari Kiura the applicant in the application and plaintiff in the suit while Anthony Ngari Ireri, Zipporah Rwamba Kabiruchi, Sarah Njoka Kiura, Haron Njeru Kiura, The Land Adjudication Officer, Mbeere, The Land Registrar, Mbeere And The Attorney General are the respondents in the application and defendants in the suit.
3. The motion came with Two (2) prayers which are as follows;



- i) That this honourable court do transfer the *Embu ELC Case No 29 of 2019* to the Siakago Principal Magistrate's court for trial and disposal.
 - ii) That costs be in cause.
4. The application is anchored on grounds on its face and the supporting affidavit sworn by the applicant. It was deposed that the subject matter of the suit parcels of land Embu/Gangara/2342, Embu/Gangara/3107 and Embu/Gangara/3108 are situated within Siakago. It was said that the parcels of land measure 33 acres and the total value of the land was Kshs 6,600,000/= which was below Kshs 20,000,000/=. It was averred that the Siakago Principal Magistrate's Court had pecuniary jurisdiction to hear and determine the matter.
5. It was further deposed that it was in the interest of justice that the matter be heard by the Siakago Magistrate's Court for speedy trial and disposal. It was the applicant's view that no prejudice would be occasioned in any way if the matter is transferred to the Siakago Principal Magistrates' court.
6. The application is opposed by the 1st and 2nd respondents who filed their respective replying affidavits. The 2nd respondent was the first to respond to the application via a replying affidavit filed April 12, 2022. She was opposed to the matter being transferred to Siakago law courts and averred that she was comfortable with the matter proceeding before this court. She averred that the only reason given to warrant the transfer was that the subject matter was below 20,000,000/= but argued that no valuation had been attached as prove of this. It was also contended that the applicant had failed to give reasons why he did not first file the matter in Siakago and it was argued that the applicant request was not because this court lacked jurisdiction to handle the matter. The 2nd respondent questioned why the applicant had sought the matter to be transferred to Siakago and what informed the timing when the matter was pending hearing. The application was termed as an abuse of the court process and the court was urged to dismiss it for being devoid of merit.
7. The 1st respondent filed his replying affidavit on June 15, 2022. He deposed that the suit had been filed in 2019 and involved a succession matter in *Embu Succession Cause No 356 of 2014*. He was of the view that the court in the circumstances may wish to refer to the succession file amongst others and argued that transferring it to Siakago would complicate matters and delay the hearing of the suit. He deposed that the suit raised complex issues which involve nullification of several titles and land adjudication matters. He argued that the court had substantially dealt with the matter and it was only fair for it to hear and conclude the matter. It was further deposed that the matter having reached the hearing stage then any transfer will delay the hearing and cause prejudice to the parties involved.
8. The suit was canvassed by way of written submissions. The applicant filed his submissions on November 1, 2022. He relied on the provisions of section 18(1) of the [Civil Procedure Act](#) which provides 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.

9. It was submitted that the above provisions empower the court to transfer suits from itself to subordinate courts and the applicant averred that he was seeking for the suit to be transferred to the Siakago Magistrate's court for reason that the suit parcels of land were within the jurisdiction of the court. The applicant reiterated that the total value of the land was Kshs 6,600,000/= and in the circumstances the Siakago court has the pecuniary jurisdiction to hear and determine the matter. It was said that it would be more convenient for the parties if the matter was transferred to the said court and lastly that the respondent had failed to demonstrate any prejudice they would be occasioned if the suit was so transferred.
10. The 1st respondent filed joint submissions with the 4th respondent, the said submissions were filed on November 2, 2022. The submissions are basically similar to the replying affidavit filed by the 1st respondent and I see no need to replicate the same herein. The 2nd respondent did not file submissions but sought to rely on her replying affidavit in opposition to the application.

Analysis And Determination

11. I have considered the application, the responses by the parties, and the rival submissions. There is only issue that commends itself for determination, which is whether the suit should be transferred to the Siakago Magistrate Court. The applicant has moved this court seeking for orders to have this suit transferred on grounds that the subject matter of the land is Kshs. 6,600,000/= which amount is below Kshs 20,000,000/=. In that regard, it was said that the Siakago Principal Magistrate's Court had pecuniary jurisdiction to hear and determine the matter. It was also deposed that the transfer would necessitate speedy disposal of the suit and that the same would not occasion prejudice to any party.
12. The 1st and 2nd respondents in opposing the application affirmed that they were comfortable with the suit proceeding before this court. It was averred that the contention that the subject matter was valued at Kshs 20,000,000/= was not backed by evidence as no valuation had been undertaken and produced before this Honourable court. The other issue raised was the fact that it was the applicant himself who had filed the matter before this court instead of Siakago court. Further, it was said that the suit was a complex one and it related to a succession cause before the high court in Embu in *Embu Succession Cause No 356 of 2014* and that the court may wish to refer to the Succession file. It was also said that this court had substantially dealt with the matter and it would be fair for the suit to be concluded in this court.
13. Transfer of suits by the High Court is provided for under section 18 of the [Civil Procedure Act](#) that stipulate thus:
- (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”.
14. The court in the Ugandan case of *David Kabungu Vs Zikarenga & 4 others*, Kampala HCC No 36 of 1995 while elaborating on the application of section 18(1) of the Civil Procedure Rules of Uganda, which is similar, to ours, stated that; “section 18 (1) of the *Civil Procedure Act* gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even *suo moto* by the court without application by any party. The burden lies on the applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is a relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice..... What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction... it is well established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship, and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused... Want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court from which transfer is sought has no jurisdiction to try the case, transfer would be refused...”
15. What can be deduced from the above authority is that transfer of suits can be done *suo moto* or upon the application of a party to the court. However, the party seeking such transfer ought to establish a strong case to warrant the transfer. The burden lies squarely on him or her to prove why the court should transfer the case to a different court. The court will not allow the application for reason that there is a mere balance of convenience in favour of the proceedings being in another court and the court will only interfere if there is great expense and difficulty in conducting the trial that would bring great injustice.
16. The applicant herein seeks to have the court transfer the suit to the Siakago Magistrate court for reason that the value of the subject matter is below Kshs 20,000,000/=. According to him, the value of all the parcels is Kshs 6,600,000/= which is within the pecuniary jurisdiction of the Siakago Magistrate court. Apart from this assertion, no evidence has been tabled before the court to prove the alleged value. As already stated above, the onus of proving why the court ought to accept the request for the transfer lies squarely on the one making the application. The applicant had a burden to prove satisfactorily that the subject matter is below Kshs 20,000,000/=: something that he has failed to show as no valuation report has been filed before the court.
17. Even assuming such prove had been furnished, I still do not see how this would have persuaded the court to exercise discretion under section 18 (1) of the *Civil Procedure Act*. There should be much more



that the applicant ought to prove considering this court has the requisite jurisdiction to determine the matter. And the respondents themselves would wish that the matter be handled here.

18. For instance, the applicant would have been required to demonstrate the expense, difficulty or injustice they would suffer if the matter is determined before this court as opposed to the Siakago Magistrate's court. This too has not been done. It is baffling to note that it is the applicant who filed this suit before this court. Just like the respondents, this court is curious as to why the said matter is now sought to be transferred while this court has all along had the conduct of the matter and has the requisite jurisdiction to determine it. This court cannot merely grant an order without sufficient prove. I find that the applicant has failed to meet the threshold set for transfer of suit and the application before me therefore lacks merit and is dismissed with costs to the respondents.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 6TH DAY DECEMBER, 2022.

M/s Ndorongo for Rose Njeru for plaintiff; Maina for Njiru Mbogo for 1st to 4th defendant and Kiongo (AG's office) for 5th to 7th defendants.

Court Assistant: Leadys

A.K. KANIARU

JUDGE

