



**Simiyu v Charamba & another (Environment and Land Miscellaneous Application  
E010 of 2024) [2024] KEELC 6782 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6782 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E010 OF 2024  
EC CHERONO, J  
OCTOBER 11, 2024**

**BETWEEN**

**MOSES WANGILA SIMIYU ..... APPLICANT**

**AND**

**PATRICK WAFULA CHARAMBA ..... 1<sup>ST</sup> RESPONDENT**

**DOMINIC OSCAR WANYONYI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me for determination is a Notice of Motion dated 13<sup>th</sup> June, 2024 seeking the following orders;-
  - a. That this Honourable Court do transfer Webuye PMC ELC NO. E017 OF 2024 to Bungoma High Court for consolidation with Bungoma High Court Civil Suit No. 77 of 1994.
  - b. That costs be in the cause.
2. The application is premised on the grounds on the face of the application supported by the affidavit of Moses Wangila Simiyu-Applicant sworn on 13<sup>th</sup> June, 2024.
3. The Applicant states that the Respondents have filed Webuye PMC ELC Case No. E017 of 2024, which involves a similar subject matter as Bungoma High Court Civil Suit No. 77 of 1994, where he is the Plaintiff, having substituted his now-deceased father. He therefore prays that the suit filed in the Webuye Principal Magistrate be transferred to Bungoma High Court for consolidation purposes.
4. The firm of BS Advocates LLP have filed grounds of opposition dated 23<sup>rd</sup> May, 2024 whose heading and content do not relate to the current suit.
5. When the said application came up for hearing, the parties agreed to have the same canvassed by way of written submissions. The Applicant acting in person filed his submissions dated 22<sup>nd</sup> June, 2024 while



the Respondents submissions dated 26<sup>th</sup> June 2024 were filed through the law firm of BS Advocates LLP.

6. The Applicant relied on the provisions of Sections 18(1)(a) of the *Civil Procedure Act* and the case of *Daniel N.Mugendi vs. Kenyatta University 7 3 Others* (2013) eKLR in support of the application.
7. The Respondents in their submissions relied in the provisions of Section 17 and 18 of the *Civil Procedure Act* and the case of *Municipal Council of Mombasa vs. Municipal Council of Mombasa* (2004) eKLR. The Respondents submitted on the instances when suits can be consolidated and buttressed this by placing reliance in the case of *Stumberg & Another vs. Potgeiter* 1970 EA 323. The Respondents further submitted that the applicant has not met the threshold for the grant of the orders sought and have done very little to back their application. They sought to have the application dismissed with costs.

### **Analysis And Determination**

8. I have considered the application filed herein and the affidavit in support thereof. I have also considered the written submissions by both the applicant in person and Counsel for the Respondents in making the decision herein. The issue that arises for determination is whether the application dated 26<sup>th</sup> February, 2021 is merited.
9. In the Affidavit filed by the Applicant, it is deposed that the Respondents herein have filed Webuye PMC ELC Case No. E017 of 2024 whose parties have not been disclosed. It is also alleged that the subject matter in the abovementioned matter is similar to that in Bungoma High Court Civil Suit No. 77 of 1994 and that it would be proper to transfer the subordinate court case to the High Court and consolidate the two cases. The Applicant also deposed that the High Court case was filed by his father and that he has since substituted his father who is now deceased after obtaining grant of letters of administration ad-litem. The Respondent on the other hand argued that the Applicant has not shown the co-relation between the two cases and as such, he has not made a case for the orders sought.
10. The jurisdiction of the High Court to transfer suits from one Court to another is provided for under Section 18 of the *Civil Procedure Act* which states 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.”

11. In the case of *David Kabungu v Zikarenga & 4 others* Kampala HCCS No. 36 of 1995, the Court had the following to say on the circumstances under which the order to transfer suits may be granted-

“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 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 or the suit has been filed in a particular court for the purposes of working injustice. What the court has to consider is whether the Applicant has made a case to justify it in closing doors of the court on which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction ..... It is a 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 expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication 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 could be refused.....”

12. The issue of transfer of a suit from the Magistrate’s Court to the Environment and Land Court is a matter of judicial discretion. Like all judicial discretions, it must be exercised judiciously. It cannot be excised on the basis of whim, caprice or sympathy. It must be based upon some reason. I have carefully considered the sole reason fronted by the applicant for transfer of Webuye PMC ELC no. E017 of 2024 to this court and find the same to be superfluous since the same has not been reasonably explained and supported by evidence.
13. On the issue of consolidation of the two cases, the *Civil Procedure Rules* under Order 11 Rule 3 (1)(h) allows this court to consolidate suits in furtherance of the oxygen principles. *Nyati Security Guards & Services Ltd vs - Municipal Council of Mombasa* [2004] eKLR set out the following principles to consider while determining the issue of consolidation:

“The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where:-

1. Some common question of law or fact arises in both or all of them; or
2. The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
3. For some other reason it is desirable to make an order for consolidating them.”



14. Bearing in mind the above principles and considerations, I find that the Applicant has not demonstrated grounds for consolidation of the two suits. Whereas the Applicant asserts that the two cases relate to the same subject matter, little or no effort has been made to establish the said similarity. I have no doubt agreeing with the Respondents that with no information placed before this Honourable Court, it is not clear what the subject matter in the two cases is. Further, this Court is unable to ascertain who the parties in the two cases are and what circumstances are obtained in the said cases. No pleadings have been attached in support of the application and this court is at a loss on the identity of the said cases. Surprisingly, the Applicant has attached proceedings of Bungoma High Court Civil Suit No. 77 of 1994 which show that this particular suit was dismissed on 22/4/1999 under Order 16 Rule 5 of the *Civil Procedure Rules*. In essence therefore, it seems there is no suit to be consolidated with Webuye PMC ELC no. e017 of 2024 if this Honourable Court was to allow the application for transfer.
15. The upshot of the forgoing is that the Notice of Motion dated 13<sup>th</sup> June, 2024 is devoid of merit and the same is hereby dismissed with costs to the Respondents.
16. It is so ordered.

**DATED AND SIGNED AND DELIVERED AT BUNGOMA THIS 11<sup>TH</sup> DAY OF OCTOBER, 2024.**

**HON.E.C CHERONO**

**ELC JUDGE**

In the presence of;

Applicant-present.

Mr. Sabwami H/B for Bulimo for the Respondent.

Bett C/A.

