



Kamweli Petroleum Oil Kenya Limited v Mwanja & 2 others (Environment and Land Miscellaneous Application E003 of 2024) [2024] KEELC 7342 (KLR) (6 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7342 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2024
TW MURIGI, J
NOVEMBER 6, 2024**

BETWEEN

KAMWELI PETROLEUM OIL KENYA LIMITED PLAINTIFF

AND

MUENI MWANIA 1ST RESPONDENT

MULI MWANIA 2ND RESPONDENT

BENSON MWANIA 3RD RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated 19th March 2024 brought under Sections 1A, 1B, 13A, 17 & 18 of the Civil Procedure Act, Sections 3 & 13 of the Environment and Land Court Act and Order 51 Rule 1 of the Civil Procedure Rules in which the Applicant seeks the following orders:-
 1. Spent.
 2. That there be a stay of proceedings in Makueni Chief Magistrate Environment and Land Case No. E036 of 2022 (Kamweli Petroleum Oil Kenya Ltd –v- Mueni Mwanja Muli & 2 Others pending the hearing and determination of this application.
 3. That the suit in Makueni Chief Magistrate Environment and Land Case No. E036 of 2022 Kamweli Petroleum Oil Kenya Ltd –v- Mueni Mwanja Muli & 2 Others be transferred to this court (Makueni Environment and Land Court) for hearing and determination.
 4. That the costs of this application await the outcome of the main suit.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Philip M. Mulwa Advocate sworn on even date.



The Applicant's Case

3. The deponent averred that the Applicant instituted Makueni MELC No. E036 of 2022 against the Defendants seeking for the orders therein. That the Respondents thereafter filed a preliminary objection together with a valuation report, challenging the pecuniary jurisdiction of the court to hear and determine the suit. According to the deponent, the suit property is valued at Kshs 60,000,000/= which is way beyond the pecuniary jurisdiction of the Chief Magistrate Court. He deposed that the Plaintiff/Applicant does intend to object to the valuation report and therefore urged the court to stay the proceedings in Makueni MELC No. E036 of 2022 and transfer the matter to this court for hearing and determination.

The Respondents Case

4. In opposing the application, the Respondents filed grounds of opposition dated 12th May 2024 raising the following grounds:-
 1. The application does not meet the criteria set out under the provisions of the law.
 2. The application before the court is incompetent as it does not comply with the mandatory provisions of Order 3 of the Civil Procedure Rules.
 3. The grounds upon which the application is brought under do not warrant or satisfy the issuance of the orders sought as already parties have filed submissions for determination before the said court.
 4. The Applicant is guilty of non-disclosure of relevant facts.
5. The application amounts to an abuse of the court process and is an afterthought therefore should be dismissed.
5. The parties were directed to canvass the application by way of written submissions.
6. The Applicant's submissions were filed on 22nd March 2024 which I have duly considered.
7. As at the time of writing this ruling, the Respondents had not filed their submissions as directed.

Analysis And Determination

8. Having considered the application and the submissions by the Applicant, the issue that arises for determination is whether this suit should be withdrawn from the lower court and transferred to this court for hearing and determination.
9. The Applicant seeks to have Makueni MELC No. E036 of 2022 transferred to this court for hearing and determination on the grounds that the trial court lacks pecuniary jurisdiction to hear and determine the same.
10. The power to transfer suits is governed by Section 18 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 each 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 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. The Applicant contended that the suit property is valued at Kshs 60,000,000/= which is above the pecuniary jurisdiction of the Chief Magistrate's court.
12. The Defendant on the other hand contended that the application is an abuse of the court process as the parties in Makueni MELC No. E036 of 2022 have already filed their respective submissions. They further contended that the application violates the provisions of Order 3 of the Civil Procedure Rules and as such the Applicant is not entitled to the orders sought.
13. It is trite law that jurisdiction is everything and without it the court cannot take one more step. The jurisdiction of a Magistrate's Court is provided under Section 7 of the Magistrate's Courts Act as follows:-
 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;
 - e. Five million shillings, where the court is presided over by a resident magistrate.
14. In *Kagenyi v Musiramo & another* (1968) EA 43, it was held that the power to transfer a case to the High court for hearing may only be exercised if the court before which it is filed is a court vested with competent jurisdiction to try and dispose of the matter. If it is incompetent, the High court lacks jurisdiction effect the transfer.



15. In the case of Boniface Waweru Mbiyu v Mary Njeri & Another (2005) eKLR the court held that:-

“whenever a matter is filed before a court lacking jurisdiction, the professional error there committed is a fundamental one, which cannot be excused as an ordinary mistake by counsel and which should not be held to prejudice the client. As between the Advocate and his or her client, such a professional error could very well lead to claims in tort. As for the court, the matter thus filed is so defective as to be a nullity. It is incompetent and void in law; and therefore it is not a motion or suit that can be transferred to any other court. It is the duty of the court or tribunal before which such matter is first brought to declare its status as a nullity; and it follows that such matter has no capacity to be transferred to any other court.”

16. It is clear from the above authorities that the power to transfer a case to the High court for hearing may only be exercised if the court before which it is filed is vested with competent jurisdiction to try and dispose of the matter.

17. Looking at the pleadings filed before the Subordinate Court which are annexed to the supporting affidavit, it is apparent the Defendant filed a preliminary objection dated 11th October 2023(annexure PMM2) challenging the pecuniary jurisdiction of the Chief Magistrate’s Court to hear and determine the suit. The valuation report by Gambian Valuers Limited(annexure PMM3) shows that the suit property is valued at Kshs 60,000,000/= which is beyond the jurisdiction of the Chief Magistrate’s Court. From the pleadings and evidence presented by the Applicant, it is clear that the Chief Magistrate’s court lacks jurisdiction to hear and determine the suit and therefore it cannot be transferred in accordance with the provisions of Section 18 of the Civil Procedure Act.

18. In the end I find that the application dated 19th March 2024 is devoid of merit and the same is hereby dismissed with costs.

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HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 6TH DAY OF NOVEMBER, 2024.

In the presence of:

Ms Kioko for the Applicant

Alfred Court Assistant

