



**Gichure v Ngigi (Environment and Land Miscellaneous Application
E171 of 2022) [2023] KEELC 820 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 820 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E171 OF 2022**

**J OMANGE, J
FEBRUARY 9, 2023**

BETWEEN

JULIUS GICHURE APPLICANT

AND

HANNAH WAIRIMU NGIGI RESPONDENT

RULING

1. By a notice of motion application dated August 19, 2022, the applicant prays for the following orders:
 - a. That the court be pleased to transfer MCELC E396 of 2021 ; Julius Gichure Versu Hannah Wairimu Ngigi from Chief Magistrates Court at Miimani to the Environment and Land Court at Nairobi.
 - b. That costs shall be in the cause.
2. The application is brought on the grounds that after the suit was commenced in the lower court, demolition was carried out in the suit property. The value of the suit demolished structure has now exceeded Kshs 20,000,000 and thus the lower court no longer has jurisdiction to determine it. In the affidavit in support of the application, the applicant attached a valuation report which estimated the loss occasioned by the structures to be Kshs 44,800,000.
3. Counsel for the applicant submitted that the court has powers to transfer the suit under section 18 of the *Civil Procedure Act*. Counsel argued that when the matter was first filed at the lower court, the magistrates court had jurisdiction to hear the matter as the prayers sought were injunctive in nature. He referred the court to the case of *Kitbit Ngeaba v Mwaniki Kisumu* in which the court reiterated the principles to guide transfer of suits to be balance of convenience, question of expense, interest of justice and possibilities of undue hardship.



4. Counsel for the respondent relied on the ground of opposition filed on September 21, 2022. Counsel argued that the valuation report that the applicant had relied on to challenge the jurisdiction cannot be relied upon. Counsel referred the court to the plaint filed by the applicant in the lower court. He submitted that none of the prayers set out therein had mentioned the alleged demolition. Lastly, counsel submitted that the court has no power to transfer the suit as it had been filed in a court with no jurisdiction in the first place.
5. It is not in dispute that this court has powers of transfer. Section 18 of the [Civil Procedure Act](#) provides;
 - 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”.
6. The only issue appears to be whether the applicant has given the courts sufficient grounds upon which to exercise discretion in his favour. It is the contention of the respondent that the applicant is not entitled to the orders sought as in the first instance, the suit in the magistrate’s court was filed in a court which had no jurisdiction. On the other hand, counsel for the applicant contends that at the time the suit was filed in the magistrate’s court demolition had not taken place. As such at the time the court had jurisdiction to handle the matter.
7. The principles for transfer of suits were well laid out in the case of David Kabungu Case (Supra) where Okello J stated that;.....

“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...”

8. I have considered the submission by learned counsels and the authorities that that have been cited. I note that the facts deponed to by the applicant are uncontroverted in their entirety as the respondent did not file a replying affidavit. The applicant avers that the demolition took place after filing of the suit. I find that this action having taken place after the filing of the suit in the lower court the applicant has good reason to have the matter heard in this court.
9. Under section 1 B of the *Civil Procedure Act* the court is required to ensure the efficient disposal of the business of the court. In the present case it is more efficient to transfer the court to court which has the jurisdiction to hear it so that all issues are dealt with once and for all.
10. The upshot of the foregoing is that application is allowed in the following terms;
 - a. Mcelc E396 Of 2021; Julius Gichure Versus Hannah Wairimu Ngigi be transferred from the Chief Magistrates Court at Miimani to the Environment and Land Courtat Nairobi.
 - b. The registry to ensure that the requisite filing fees is paid if the earlier assessment is less than that due.
 - c. Costs of the application to be in the cause.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 9TH DAY OF FEBRUARY 2023.

JUDY OMANGE

JUDGE

In the presence of: -

Ms Mbu.....for Kabaka for Applicant

Mrs. kariuki for the Respondent

Steve - Court Assistant

