



REPUBLIC OF KENYA



Chepkarat v Mtai & 20 others (Environment and Land Miscellaneous Application E020 of 2022) [2023] KEELC 17747 (KLR) (6 June 2023) (Ruling)

Neutral citation: [2023] KEELC 17747 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E020 OF 2022
EC CHERONO, J
JUNE 6, 2023**

BETWEEN

JOSEPH MASHANY CHEPKARAT APPLICANT

AND

ABIBU MTAI 1ST RESPONDENT
KIPLIMO MWACHAR 2ND RESPONDENT
SILAS BOKOSE 3RD RESPONDENT
GEORGE KWEMOI 4TH RESPONDENT
PETER KIPROTICH 5TH RESPONDENT
LYDIA KIPLAI 6TH RESPONDENT
SILAS MANG'AT 7TH RESPONDENT
DAVID BARASA 8TH RESPONDENT
IAN SAMMY 9TH RESPONDENT
BENARD KIPLAI 10TH RESPONDENT
AUGUSTINE KWEMOI 11TH RESPONDENT
CLEMENT KWEMOI 12TH RESPONDENT
KIBET KWEMOI 13TH RESPONDENT
JOSEPH MANG'AT 14TH RESPONDENT
ALEX TANUI 15TH RESPONDENT
JOSEPH MAKET 16TH RESPONDENT
FELIX CHEPCHUI 17TH RESPONDENT



CECILIA NGEYWO	18 TH RESPONDENT
JUMA ERICK	19 TH RESPONDENT
BEN KESIS	20 TH RESPONDENT
JUMA BEN	21 ST RESPONDENT

RULING

1. The Applicant, vide a Notice of Motion dated October 11, 2022 seeks the following orders;
 1. That Sirisia ELC Case No 9 of 2020 be transferred to Kimilili Court for Hearing and determination
 2. Costs.
2. The application is supported by the affidavit of the applicant sworn on even date and grounds apparent on the face of the said application. The applicant in his supporting affidavit stated that Sirisia ELC No 9 of 2020 touches on land parcel No Elgon/chemoge/183 situated within Mt. Elgon Sub-County.
3. He further stated that the suit land is near Kimilili law Courts hence the need to have the same transferred to the said Court. In conclusion, the applicant deposed that the said case being Sirisia ELC 9 of 2020 is yet to be heard.
4. I have considered the Notice of Motion application dated October 11, 2022, the supporting affidavit as well as the grounds on the face thereof. Section 18 of the *Civil Procedure Act* which is the applicable law bestows upon the High Court and Courts of equal status to transfer suits of a civil nature . It 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.
 - (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.”

5. It is clear from the provisions of the law that the party applying for a transfer has the burden of providing sufficient reasons as to why the transfer is merited. At paragraph 3 of the supporting affidavit, the applicant deposed that the suit case at Sirisia being ELC No 9 of 2020 touches on the land parcel No Elgon/chemoge/183 situated within Mt. Elgon sub-County and that the suit land is near Kiimilili Law Courts hence the need to have the same transferred. The suit sought to be transferred from Sirisia to Kimilili law Courts was filed in the year 2020. At the time of filing the said suit at Sirisia, Kimilili Law Courts was in existence. It is not that Kimilili law courts was not in existence at the time of filing the said suit. I find the reasons given by the applicant for the transfer of the said suit from Sirisia to Kimilili law courts not sufficient to warrant the grant of the orders. The applicant filed the suit in Sirisia consciously knowing while that Kimilili was near. He cannot now use the reason that Kimilili is nearer when Kimilili law Courts was in existence when he filed the said suit in the year 2020. The applicant has not explained why he did not file the said suit in Kimilili in the year 2020
6. In the absence of any sufficient reasons, the application dated October 11, 2022 lacks merit and the same is hereby dismissed. The Applicant shall bear his own costs of the application.

Orders accordingly.

DATED, SIGNED AND DELIVERED IN THE OPEN COURT AT BUNGOMA THIS 6TH JUNE, 2023

HON. E C CHERONO

ELC JUDGE

In the presence of;

1. Juma Waswa H/B for Bwonchiri for Applicant

2. Respondents-absent

3. Joy C/A

