



**Aamrin v Meroka & another (Environment & Land Miscellaneous Case 22 of 2023) [2023] KEELC 21292 (KLR) (3 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21292 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND MISCELLANEOUS CASE 22 OF 2023  
A OMBWAYO, J  
NOVEMBER 3, 2023**

**BETWEEN**

**FATHIMA AAMRIN ..... APPLICANT**

**AND**

**ESNAH KWAMBOKA MEROKA ..... 1<sup>ST</sup> DEFENDANT**

**ISAAC MEROKA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Fathima Aamrin (herein after referred to as the applicant) has come to this court with an application dated 19<sup>th</sup> September 2023 seeking orders that this Honorable court be pleased to issue an order transferring the matter serialized as Nakuru Cm Elc No. E063 Of 2023 *Fathima Aamrin v Esnah Kwamboka Meroka & Isaac Meroka* from the Chief Magistrates' Court at Nakuru to Chief Magistrates' Court at Kericho for hearing and final determination on its merits. That costs of this application be in the cause.
2. The application is based on grounds that there is a suit pending in the Chief Magistrate's court at Nakuru serialized Nakuru Cm EL-C No. E063 Of 2023 *Fathima Aamrin v Esnah Kwamboka Meroka & Isaac Meroka* and which suit was instituted vide a plaint dated 22<sup>nd</sup> March, 2023.
3. The suit therein though commercial in nature relates to a transaction that went sour over a property known as L. Residential Plot No. H- Kericho Municipality Parcel No. 503 and as such on the basis of where the immovable property is situated then the court with territorial jurisdiction is the Chief Magistrate's' Court at Kericho.
4. The Plaintiff/Applicant had instituted the said suit at Chief Magistrates' court at Nakuru on the believe that due to the fact that all that is in dispute is an issue of money to be repaid as between the parties then the same being a commercial dispute would have then heard at Nakuru.



5. The 2<sup>nd</sup> Defendant/Respondent has since raised its reservation and filed a notice of preliminary objection dated 24<sup>th</sup> April, 2023 stating that the matter ought to have been filed in the Chief Magistrates' Court at Kericho and that the Chief Magistrates' Court at Nakuru lacks jurisdiction.
6. The Applicant herein to expedite the matter and to allow the matter be determined on its merits now beseeches this Honorable Court to intervene and order this matter to be transferred from Nakuru to Kericho. The Defendants/Respondents shall not be prejudiced in any way since all parties shall have their day in court and where the instant suit shall be determined on its merits.
7. That Article 162(2) of the *Constitution* of Kenya and the *Environment and Land Court Act* vests the mandate to deal with land matters in the Environment and Land Court which has jurisdiction and power in its status just like the High Court to transfer matters from one Chief Magistrates' Court to another.
8. The applicant contends that this court has the power to transfer the matter to Chief Magistrates' Court at Kericho for determination and in exercising the oxygen principle in seeking to preserve the ends of justice and in conclusively seeking to determine the interests as between the parties and that it is in the interest of justice that the Applicant makes this application
9. The 1<sup>st</sup> defendant filed grounds of opposition whose import is that the suit being filed is the wrong forum the power of transfer is not available to the plaintiff. That the suit being sought to be transferred is incompetent ab-initio.
10. I have considered the application and the grounds of opposition and submissions on record and do find that transfer of suits under section 18 of the *Civil Procedure Act* Cap 21 Laws of Kenya is discretionary where the suit is filed in the court with jurisdiction.
11. The discretion is not fettered where the lower court has no jurisdiction.
12. In the case of *John Mwangi Karanja V Alfred Ndiangui* [2011] eKLR the Court held that;

With the enactment of sections 1A and 1B of the *Civil Procedure Act*, the time has perhaps now come for this matter of transfer of suits to be looked at afresh. These sections provide as follows:-

Section  
1A

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in



the processes of the Court and to comply with the directions and orders of the court.

1B.

- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-
  - (a) the just determination of the proceedings;
  - (b) the efficient disposal of the business of the Court;
  - (c) the efficient use of the available judicial and administrative resources;
  - (d) the timely disposal of the proceedings, and all other proceedings in the Court at a cost affordable by the respective parties; and
  - e) the use of suitable technology.”

It appears to me that transfer of suits from one court to another is essentially a procedural issue that has been elevated to the status of jurisdiction.

If a suit finds itself in the wrong court, surely it is in the interests of justice and in the interests of all concerned that the suit be forwarded to the appropriate court with jurisdiction so that the issues in dispute can be properly and finally adjudicated. What prejudice would any party suffer in that event? After all, the overriding objective of the *Civil Procedure Act* and Rules is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act (section 1A (1)).

The court itself is enjoined by subsection (2) of that section to seek to give effect to the said overriding objective in exercise of its powers under the Act or the interpretation of any of its provisions.”



13. The Court has now carefully read and considered the Application the affidavits and the written submissions and the issue for determination is whether the Applicant is entitled to the orders sought.
14. Section 18 of the *Civil Procedure Act* bestows upon the High Court the powers to transfer suits of a civil nature. It 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”.

It is therefore not in doubt that the party applying for a transfer has the burden of providing sufficient reasons as to why the transfer is merited.

Jurisdiction is everything and without jurisdiction the Court has no option but to down its tools. It is not in doubt that though the powers to order transfer by the High Court which has an equal status to the Environment and Land Court are discretionary, however, a matter can only be transferred if the Court from which the Applicant is seeking to have the matter transferred from had jurisdiction over the said matter and the Applicant has satisfied the Court that the transfer is necessary.

This was the position in the case of *Kithita Ngeana ...v... Mwaniki Kisume* [2018] eKLR where the the Court stated;

“Circumstances that would move a court to grant the order sought were considered in the *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...”

If the Court has no jurisdiction over the matter when the claim was filed, it would then mean that the claim is a nullity in law and as the suit is incompetent and the Court does not have jurisdiction to transfer the matter.

This was reiterated in the case of [\*Abraham Mwangi Wamigwi ....V... Simon Mbiriri Wanjiku & Another\*](#) [2012] eKLR where the Court held that:-

“The law relating to transfer of suits from subordinate Courts to the High Court or any transfer for that matter is very clear. In *Kagenyi v. Musiramo* (supra), Sir Udo Udoma, CJ made it clear that an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it. In *Ali Abdi Sheikh v. Edward Nderitu Wainaina & Others* (supra), Koome, J (as she then was) found that since the plaintiff had filed a suit in respect of a claim to land whose value exceeded Kshs. 500,000.00 in the subordinate court the suit could not be transferred since the general powers of the court to transfer suits under section 18 of the [\*Civil Procedure Act\*](#) cannot be exercised in a matter where the suit was filed in a court without jurisdiction. A similar view was taken by the same Judge in *Rainbow Manufacturers Limited v. National Bank of Kenya* (supra).

Dealing with the same issue of jurisdiction, J B Ojwang, J (as he then was) in the *Boniface Waweru Mbiyu v. Mary Njeri & Another* expressed himself as follows:

“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”.

It is therefore trite that where a suit is instituted before a tribunal having no jurisdiction, such a suit cannot be transferred under section 18 aforesaid to a tribunal where it ought to have been properly instituted. The reason for this is that a suit filed in a court without jurisdiction is a nullity in law and whatever is a nullity in law is in the eyes of the law nothing and therefore the court cannot purport to transfer nothing and mould it into something through a procedure known as “transfer”. In other



words, courts can only transfer a cause whose existence is recognised by law. It is now settled law that where a Court finds that it has no jurisdiction, it must immediately down its tools and proceed no further. That position was made clear by Nyarangi JA in The *Owners of Motor Vessel "Lillian S" v. Caltex Oil Kenya Limited* (1989) KLR 1, where the learned Judge stated:

“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.

15. Further in the case of *Wamathu Gichoya v Mary Wainoi Magu* [2015] eKLR the Court held that:-

“Furthermore, according to *Kagenyi v Musiramo and Another*, supra, 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. In other words, if the suit filed is incompetent, the High Court lacks jurisdiction to effect a transfer.”

16. Since the Applicant is seeking to transfer the suit based on the fact that the Chief Magistrates Court Nakuru has no jurisdiction, then the Court finds that the application is not merited as already held above by the Court that if the suit is to be transferred from a Court with no jurisdiction, then it means it is not only an incompetent suit, but also a nullity in law and thus there is nothing to transfer. Consequently, the Court holds and finds that the Applicant has not satisfied this Court that it warrants the grant of the orders sought and therefore he is not entitled to the prayers sought. The application is dismissed with costs. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIA E MAIL AT NAKURU THIS 3<sup>RD</sup> DAY OF NOVEMBER, 2023.**

**A O OMBWAYO**

**JUDGE**

