



**Kethi v Munyiri & another (Miscellaneous Application
E002 of 2021) [2022] KEELC 15689 (KLR) (3 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 15689 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
MISCELLANEOUS APPLICATION E002 OF 2021
EC CHERONO, J
JUNE 3, 2022**

BETWEEN

MARGARET WANJIKU KETHI APPLICANT

AND

JANE WANJIRU MUNYIRI 1ST RESPONDENT

JOHNSOM MUNYIRI GACHANJA 2ND RESPONDENT

RULING

1. By a Notice of Motion application dated July 28, 2021, the Applicant seeks the following orders;
 - a. Spent.
 - b. Spent.
 - c. That this Honourable court be pleased to issue an order to remove and transfer CMELC No 28 of 2020 (Margaret Wanjiku Kethi vs Jane Wanjiru Munyiri & Another) from the Chief Magistrate's court Kerugoya to Wang'uru Law Courts and the same be consolidated with Wang'uru CMELC No 16 of 2021 (Jane Wanjiru Munyiri & 7 Others V Margaret Wanjiku Kethi).
 - d. That costs of this application be provided for.
2. The application is premised on grounds apparent on the face of the said application and the supporting affidavit of Margaret Wanjiku Kethi. The supporting affidavit contain numerous annexures in further support of the application.
3. The Respondents opposed the said application vide grounds of opposition dated August 24, 2021 and filed in court on August 25, 2021.



Applicant's Summary of Facts

4. According to the Applicant, she filed a suit against the defendants/Respondents herein before the Chief Magistrate Kerugoya, vide a plaint dated March 13, 2020 being CMELC No 28 OF 2020 seeking the following reliefs: -
 - a. An order for specific performance as per the Sale Agreement dated June 5, 2014.
 - b. Costs of this suit plus interest.
 - c. Any other relief the court deems fit to grant.
5. On the other hand, the respondents herein instituted another suit on March 25, 2021 vide Wang'uru MC ELC No 16 of 2021, between Jane Wanjiru Munyiri & Another versus Margaret Wanjiku Kethi whereby they are seeking to have him evicted from the suit property.
6. He stated that he filed the suit in Kerugoya as a result of misinformation as to the territorial jurisdiction of the Chief Magistrates Court at Kerugoya.
7. He stated that he had been advised by his advocates on record that the Kerugoya Court has no jurisdiction to hear and determine the matters in question and that the court that has jurisdiction is the Wang'uru Magistrates Court.
8. He stated that he had also been advised by her advocates on record that this Honourable court has the jurisdiction to remove and transfer Kerugoya CMELC No 28 Of 2020 and consolidate it with Wang'uru MC ELC No 16 of 2021.
9. She stated that the transfer and consolidation will not be prejudicial to the Defendants/Respondents and prayed that the same be allowed.

Respondents' Summary of Facts

10. The Respondents raised the following grounds of opposition: -
 - a. The application is incompetent, bad (sic) in law and an abuse of court process.
 - b. That the High Court cannot order stay of proceedings in a lower court unless there are proceedings on appeal before it.
 - c. That the magistrate court has jurisdiction to hear matters across Kenya.
 - d. The application is vexatious and should be struck out with costs.

Applicant's Submissions

11. The applicant submitted that this honourable court has jurisdiction to entertain the orders prayed for as provided under Sections 17 and 18 of the *Civil Procedure Act*, Cap 21. She relied on the case of *Aberdare Investments Vs Bernard Wachira & 5 others*.
12. The applicant further submitted that though the two suits in Kerugoya and Wang'uru are filed in courts with competent jurisdiction, the one at Wang'uru amounts to a delaying tactic and akin to forum shopping and that the only cure was for this Honourable Court to transfer the Kerugoya one to Wang'uru and the two cases be consolidated for one judgment to be delivered.



13. The applicant submitted that in consolidation of suits, courts are guided by: -Do the same question of law and fact arise in both cases?Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transaction?Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party?
14. The applicant submitted that the subject matter in both cases is the same and that they involve the ownership of Rice holding No 3955 Unit Karaba Section. The parties in both cases are also the same and the suits arise from the same sale transaction.
15. The applicant submitted that the respondents had not exhibited the prejudice to be suffered and that it would not be a prudent and efficient use of available judicial and administrative resources and that the result of the two suits being determined differently would be catastrophic as execution of the orders would be impossible. She relied in the case of Kerugoya ELC Case No 258 of 2013 *Benson G Mutahi vs Raphael Gichovi Munene Kabutu & 4 others*.
16. The Applicant submitted that the respondents ought to be condemned to pay costs as the reason as to why the application was brought was due to the actions of the respondents as they filed the Wang'uru Case knowing too well that there was an existing suit before the Kerugoya Chief Magistrates Court.

Respondents' Submissions

17. The respondents on the other hand submitted that this Honourable Court cannot order stay as Order 42 rule 6 is categorical on when the courts can grant orders of stay and the terms and conditions, if any.
18. The respondent also submitted that the Wang'uru Court on 25/3/2021, had stayed the suit before it until the one at Kerugoya is heard and determined.
19. The respondent further submitted that whereas this Honourable Court has power to transfer suits, that power must be exercised judicially and not whimsically. They relied on the case of *John Mwangi Karanja Vs Alfred Ndangui* (2021) e KLR.
20. The respondent submitted that the applicant is playing games with the judicial process and cannot opt one court to another at their expense.
21. They prayed that the application be dismissed for being vexatious.

Analysis

22. I have considered the application herein, the affidavit in support, grounds of opposition, rival submissions and the applicable law.
23. The power to transfer a suit is provided for under Section 18 (1) (a) of the *Civil Procedure Rules* which provides as follows;

“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;”



24. In the case of *MWK vs PKI* [2021] e KLR, the Court held that: -

“14. The power to transfer a suit is discretionary. The burden of providing sufficient reasons of the transfer rests with the Applicant.”

25. I have looked at the explanation proffered by the applicant. They explained that the circumstances that warranted the application is that the two suits in dispute herein are similar in that the subject matter, the parties and facts that give rise to the cause of action are similar.

26. The Respondents in their submissions stated that there was no need for the same to be transferred as the Wang’uru Court had stayed the case so as the Kerugoya matter could be determined first. The respondent submitted that there was a court order to that effect. The Respondent did not attach the said order and thus there is no material before the court to ascertain the veracity of the same which must therefore be rejected.

27. I have also looked at the annexures marked MWK1 and MWK2 which are plaints in respect of the two suits. Indeed, the parties and the subject matter giving rise to the two suits are similar.

28. I find the explanation proffered by the applicant sufficient to warrant an order for the transfer and consolidation of two case for purposes of determining the dispute in one omnibus case instead of having determination of one issue in two separate cases. It will also be a prudent way of utilising resources and reducing backlog of cases in our Courts as there is no basis for the dispute to be determined in two different courts.

29. Suffice to say that when the Applicant filed the first case being CMELC No 28 of 2020 (Kerugoya), the Respondents need not have filed the subsequent case being CMELC No 16 of 2021 (Wang’uru). The Respondents would have filed their defence or counter-claim in the same suit instead of filing a separate suit in a separate court.

30. On the issue of consolidation, I am guided by the case of *Law Society of Kenya Vs Centre for Human Rights & Democracy & 12 others* [2014] e KLR where the Supreme Court of Kenya held that: -

“(39) The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it. In the matter at hand, this Court would have to be satisfied that the appeals sought to be consolidated turn upon the same or similar issues. In addition, the Court must be satisfied that no injustice would be occasioned to the respondents if consolidation is ordered as prayed.”

31. As observed herein above, I find nothing offensive if the two suits are consolidated after transfer as the parties and the subject matter is similar. I find that none of the parties will suffer injustice/prejudice if the application is allowed as consolidation of the two suits will not only save the Courts judicial time but will go a long way in facilitating the efficient and expeditious disposal of the dispute.

Conclusion

32. From the foregoing, I find that the Notice of Motion dated July 28, 2021 has merit and the same is hereby allowed as prayed. I order each party to bear their own costs. It is so ordered.



**RULING READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 3RD
JUNE, 2022.**

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HON. E.C. CHERONO

ELC JUDGE

