



REPUBLIC OF KENYA



Kinyanjui v Land Registrar & 4 others (Miscellaneous Application E012 of 2025) [2025] KEHC 8405 (KLR) (16 June 2025) (Judgment)

Neutral citation: [2025] KEHC 8405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E012 OF 2025
DO CHEPKWONY, J
JUNE 16, 2025**

BETWEEN

VINCENT THOGO KINYANJUI APPLICANT

AND

LAND REGISTRAR 1ST RESPONDENT

GEORGE NJARAMBA KIAMA 2ND RESPONDENT

KELVIN KITHINJI 3RD RESPONDENT

PETER MBURU KIHKA 4TH RESPONDENT

BRICK HOME SECURITY LIMITED 5TH RESPONDENT

JUDGMENT

1. What is before the court for determination is the Notice of Motion application dated 21ST January, 2025 in which the Applicant seeks the following orders:-
 - a. Spent.
 - b. THAT this Honourable Court be and is hereby pleased to make an order that KIAMBU MCELC CASE No. E047 of 2023 be transferred from Kiambu Law Courts to Limuru Law Courts.
 - c. THAT the costs of this application and suit be provided for.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Vincent Thogo Kinyanjui sworn on the instant date. According to the Applicant, this matter should be transferred to Limuru Law Courts following lack of territorial and/or geographical jurisdiction to handle the matter so that the ends of justice is realised as per the ruling delivered by the trial court on 21ST



August, 2024. He also holds that the Respondents will not suffer any prejudice with the transfer which cannot be compensated by way of costs and he thus urged the court to allow the application as prayed.

3. The Applicant filed Replying Affidavit sworn by Kelvin Kithinji Kibiti sworn on 3rd February, 2025, wherein he states that in a ruling delivered on 21st August, 2024, the trial court directed the Applicant to move the High Court and have the suit transferred within 3 months, failure to which, the suit would be dismissed with costs to the Respondents. This Ruling was in respect of a Notice of Preliminary Objection that the Respondents had lodged on want of jurisdiction of the trial court. The Applicant has thus urged that since the Applicant has taken more than five (5) months to file the application, the suit stands as dismissed.
4. The court directed the parties to canvass the application by way of written submissions whereby the Applicant filed submissions dated 21st March, 2025 while the 2nd to 5th Respondents filed submissions dated 24th March, 2025, which the court has read and considered.

Analysis and Determination.

5. I have read through the Notice of Motion application, the affidavits in support and rebuttal thereof alongside the written submissions filed by either party and considered the cited statute and case law cited by the parties herein.
6. From the application, the main issue for determination is whether the application has met the threshold to warrant transfer of the suit.
7. The jurisdiction of the High Court to transfer suits from one Court to another is provided under Section 18 of the *Civil Procedure Act* which states 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.”



8. In the case of David Kabungu –vs- Zikarenga & 4 Others, Kampala HCCS No. 36 of 1995, the Court stated as follows on the circumstances under which the order to transfer suits may be granted:-

“Section 18(1) of the Civil Procedure Act gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. The burden lies on the Applicant to make out a strong case for the transfer...”

9. In the instant case, the dispute refers to a suit property which is situated in Limuru and thus in terms of pecuniary jurisdiction, the appropriate court to handle the dispute is Limuru Law Courts. However, a reading of the title of the case before the Magistrate’s Court, the same is titled KIAMBU MCELC CASE No. E047 of 2023. In this regard, this Court being a High Court, does not have supervisory power over the Magistrate ELC Court as this is a preserve of the Environment and Land Court as provided for under Article 162 of the Constitution of Kenya, 2010 and Section 13 of the Environment and Land Court Act.

10. Article 162 (2)(b) of the Constitution states:-

“[162]. (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

- a.
- b. the environment and the use and occupation of, and title to, land.

11. Section 13 of the Environment and Land Court provides that:-

[13]. Jurisdiction of the Court

- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.
- (3) Nothing in this Act shall preclude the Court from hearing and



determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.

- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- (5) Deleted by Act No. 12 of 2012, Sch.
- (6) Deleted by Act No. 12 of 2012, Sch.
- (7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
 - (a) interim or permanent preservation orders including injunctions;
 - (b) prerogative orders;
 - (c) award of damages;
 - (d) compensation;
 - (e) specific performance;
 - (g) restitution;
 - (h) declaration; or
 - (i) costs.

12. In light of the above-cited provisions, this application ought to have been filed in the Environment and Land Court which is situated in Thika and not in Kiambu. Therefore, this Court lacks jurisdiction to handle the application and proceeds to down its tools(See the case of The Owners of Motor Vesel “Lilian S” –vs- Caltex Oil (K) Ltd [1989]KLR 1.

13. For those reasons, this Court does not have jurisdiction to transfer the file and thus the application is hereby struck out with costs.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 16TH DAY OF JUNE....\, 2025.

D. O. CHEPKWONY

JUDGE

