



**Wairimu & another v Ajwala (Miscellaneous Civil Case
E127 of 2024) [2025] KEHC 10127 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10127 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL CASE E127 OF 2024
FN MUCHEMI, J
JULY 10, 2025**

BETWEEN

JANET WAITHIRA WAIRIMU 1ST APPLICANT

FRED WANYOIKE NGIGI 2ND APPLICANT

AND

NORMAN OTIENO AJWALA RESPONDENT

RULING

Brief facts

1. The application dated 19th August 2024 is seeks for orders of transfer of Ruiru SPM ELC No. E069 of 2024 at Ruiru to the Chief Magistrate’s Environment & Land Court at Thika for hearing and determination.
2. The respondent opposed the application and filed Grounds of Opposition dated 10th October 2024.

Applicants’ Case

3. The applicants state that they instituted a suit against the respondent in Ruiru SPM ELC No. E069 of 2024 for breach of sale agreement dated 19th November 2021 in respect of Plot No. 10 Juja/Kiarua Block 1/217 represented by share certificate No. 0016 for a consideration of Kshs. 3,300,000/-. The respondent paid a deposit of Kshs. 2million to their bank account number 00901819992276 at Equity Bank Thika Branch.
4. The balance of Kshs. 1,300,000/- was meant to be paid on or before the lapse of eight months after execution of the agreement. In the event of default by the respondent, he was supposed to forfeit 25% of the purchase price which is equivalent to Kshs. 1,195,000/-. Unfortunately, the respondent breached the said agreement.



5. The applicants state that the respondent has filed a defence and a Notice of Preliminary Objection opposing the trial and jurisdiction of Ruiru Law Courts. The applicants further aver that they have realized that the Environment and Land Court at Thika Chief Magistrate Court is seized of the requisite jurisdiction to deal with the case for the transaction was transacted within its jurisdiction and furthermore the subject property is situated within Thika sub county.

The Respondent's Case

6. The respondent states that the application is fatally defective, frivolous, vexatious and is intended to steal a march on his part since he filed a preliminary objection in Ruiru SPM Magistrate's Court ELC Case No. E069 of 2024 and the same was upheld. As such, the instant application is belated and serves no purpose in law.
7. Directions were issued that parties put in written submissions and the record shows that the applicants complied by filing submissions. The respondent on the other hand had not filed his submissions by the time of writing this ruling.

The Applicants' Submissions.

8. The applicants submit that the whole transaction occurred at Thika and hence the matter ought to be transferred to the environment and land court at Thika which has competent jurisdiction to try and determine the issues in dispute and further suit land parcel Plot No. 10 Juja/Kiaura Block 1/217 is situated within the jurisdiction of the Environment and Land court at Thika.

The Law

9. Section 18 of the *Civil Procedure Act* provides:-

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.

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

10. Section 18 of the Act empowers the High Court to withdraw and transfer a case instituted in a subordinate court on application of any of the parties or on its own motion. For the court to grant an order of transfer the applicant must satisfy the court as to the reasons for such orders.



11. This principle was enunciated in the Ugandan case of David Kabungu vs Zikarenga HCCC No. 36 of 1995 which held:-

Section 18(1)(b) 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 the application by any party. The burden lies on the applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is a relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice. 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 a well-established principle of law that 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 which transfer is sought has no jurisdiction to try the case, transfer would be refused.....

12. In the case of Hanzhou Agrochemicals Industries Ltd vs Panda Flowers Ltd [2012] eKLR the court held:-

In my view, which view I gather from authorities and from the law. The court should consider such factors as the motive and character of the proceedings, the nature of the relief of remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under all circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case.

13. It is evident from the record that the applicants instituted a suit against the respondent in the SPM Court in Ruiru namely ELC No. E069 of 2024 for breach of the sale agreement dated 19th November 2021. The applicants entered into a sale agreement with the respondent for land parcel Plot No. 10 Juja/Kiaura Block 1/217 situated at Juja sub county within Thika for a consideration of Kshs. 3,300,000/-. The respondent challenged the jurisdiction of the court in Ruiru and the said court rendered its ruling on 1st October 2024 directing the applicants herein to finalize the process of transfer of the suit to the appropriate court by 30th October 2024 in default the suit would be struck out.
14. It is important to note that the applicants filed the current application on 20th August 2024 thus complying with the orders of the trial court. This is evident that the applicant had already started the process of transferring the suit at Ruiru to Thika by the 20th August 2024. The orders of the magistrate that gave the parties time to transfer the suit were made on 1st October 2024 about 1½ months after filing of this application. Once an application is filed in court, it has to be heard and determined and the applicant may not be in control of the court process which had to move in accordance with the



procedure of the court and availability of hearing and mention dates in the court diary. As such, the applicant was not in control of the time the application would take in court before the ruling would be delivered. In my considered view, what matters is that the applicant had commenced the process of transferring the matter from Ruiru to Thika even before the Ruiru court gave its directions. The said directions came after the fact and are not applicable to this application. The preliminary objection was upheld but with conditions to be met by the parties. One of the conditions was that the suit would be struck out for failure to comply with the order of transfer. By the time these conditions were set, the process of transfer had begun. As such, the said conditions could not apply retrospectively.

15. The respondent has not disputed the grounds relied on in this application that the land in issue Plot No. 10 Juja/Kiaura/Block 1/217 is situated within Juja Sub- County which falls under the jurisdiction of the Chief Magistrate, Thika. The transaction of the sale of the plot took place within Thika, a fact that is not disputed.
16. I therefore find that this application is compliance with the requirements set out under Section 18 of the *Civil Procedure Act* and is hereby allowed.
17. The Ruiru Chief Magistrate Court ELC No E069 is hereby transferred to Thika Chef Magistrate's Court for hearing and determination.
18. The applicant shall meet the costs of this application assessed at KSh.20,000/= .
19. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 10TH DAY OF JULY 2025.

F. MUCHEMI

JUDGE

