



Metrotrans Logistics Limited v Kingori & 6 others (Miscellaneous Civil Application 38 of 2022) [2024] KEHC 3783 (KLR) (3 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3783 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
MISCELLANEOUS CIVIL APPLICATION 38 OF 2022
CW GITHUA, J
APRIL 3, 2024**

BETWEEN

METROTRANS LOGISTICS LIMITED APPLICANT

AND

JOSEPH NDUMIA KINGORI 1ST RESPONDENT
MARTIN KINYUA NJIRU 2ND RESPONDENT
CHRISTOPHER MUGENDI NYAGA 3RD RESPONDENT
CHRISTINE WANDIA GAKOMO 4TH RESPONDENT
JOYCE WAIRIMU KAMITI 5TH RESPONDENT
JACOB MUCHANGI MWANGI 6TH RESPONDENT
JAMES MBUGUA KINYUA 7TH RESPONDENT

RULING

1. Metrotrans Logistics Limited, the applicant herein approached this court through a Notice of Motion dated 8th September 2022 seeking to have the following suits transferred to the Principal Magistrate's Court at Kandara for hearing and determination:
 - i. Murang'a CMCC 318 of 2018- *Joseph Ndumia Kingori v Jacob Muchangi Mwangi, James Mbugua Kinyua, Family Bank Limited, Metrotrans Logistics Limited and Barclays Bank of Kenya Limited*;
 - ii. Murang'a CMCC 319 of 2018- *Martin Kinyua Njiru v Jacob Muchangi Mwangi, James Mbugua Kinyua, Family Bank Limited, Metrotrans Logistics Limited and Barclays Bank of Kenya Limited*;



- iii. Kigumo CMCC 09 of 2019- *Christopher Mugendi Nyaga v John Kabera & Metrotrans Logistics Limited*;
- iv. Kigumo CMCC 72 of 2019- *Christine Wandia Gakomo v Job Mwangi & Metrotrans Logistics Limited*;
- v. Kigumo CMCC 159 Of 2019- *Joyce Wairimu Kamiti v John Kabera & Metrotrans Logistics Limited*.

The applicant also prayed that costs of the application abides outcome of the various suits.

2. In the grounds premising the Motion which were replicated in the depositions made in the supporting affidavit sworn on 8th of September 2022 by a director of the applicant Mr. Oscar Omurwa Rosana, the applicant contended that the cause of action in all the aforementioned suits arose from a road traffic accident which occurred on 2nd May 2018 at Kabati, along Thika-Kenol road, involving motor vehicles registration No. KCG xxxX belonging to the applicant and Motor Vehicle registration No. KCD xxxP.
3. It was further deponed on behalf of the applicant that as a result of the accident, a number of suits were filed in various Law Courts within Murang'a County being Kandara, Kigumo and Murang'a Law Courts which suits are still pending hearing and determination; that among the suits filed at the Kandara Law Courts, a test suit on liability had been selected being No. CMCC No. 81 of 2020. It was the applicant's case that the proposed transfer is necessary in order to avoid the possibility of having conflicting decisions on the issue of liability being made by the different courts in which the suits were pending determination.
4. The 3rd and 5th respondents supported the application while all the other respondents though served and despite being given ample time to file their responses, if any, did not file any response. The application was therefore unopposed.
5. Having carefully considered the application and the oral submissions made by Mr. Githinji , learned counsel for the applicant, I find that the only issue arising for my determination is whether the prayer for transfer of the aforementioned suits to Kandara Law Courts is merited.
6. The law governing transfer of suits by the High Court to any subordinate Court or from one subordinate court to another is found in Section 18 of the [Civil Procedure Act](#) which 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 the 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”.
7. It is clear from the above provision that the High Court has wide and unfettered discretion in deciding whether or not to transfer a suit from one subordinate court to another and it can do so whether on application by one of the parties or sui moto. However, discretion being the exercise of judicial power derived from the law must be exercised judiciously on the basis of established legal principles and reasons aimed at achieving substantial justice to the parties in a suit taking into account the facts and circumstances of each case. See: *Patriotic guards Ltd v James Kipchirchir Sambu* [2018] eKLR.
8. In this case, the applicant’s contention that all the suits subject matter of the instant application arose from a single road traffic accident which occurred within the territorial jurisdiction of Kandara Law Courts has not been disputed by any of the respondents. They have also not disputed the applicant’s claim that all the aforesaid suits are pending determination in three different subordinate courts being Muranga, Kigumo and Kandara Law Courts. It is also not contested that a test suit on the issue of liability has been selected among the suits pending hearing at the Kandara Law Courts.
9. Given the above uncontested facts, I agree with the applicant that having the suits proceed in three different courts may lead to conflicting decisions being made by the different courts on the issue of liability which would expose the administration of justice to public ridicule and would obviously not advance the cause of justice. I am also persuaded to find that if i declined to allow the application, the parties, especially the applicant would incur unnecessary costs which can be avoided and such a move may also be an impediment to the expeditious disposal of the suits.
10. As none of the respondents opposed the application, there is no indication that allowing the application will occasion them any prejudice.
11. Flowing from the foregoing, I am satisfied that the applicant has laid sufficient basis to warrant the exercise of my discretion in its favour by ordering the transfer of all the above mentioned suits to Kandara Law Courts for hearing and final disposal. It is therefore my finding that the Notice of Motion dated 8th April 2022, is merited and it is accordingly allowed as prayed but with no orders as to costs.

It is so ordered.

C.W. GITHUA

JUDGE

DATED, SIGNED AND DELIVERED AT MURANG’A THIS 3RD DAY OF APRIL 2024.

In the presence of :

Mr. Githinji for the Applicant

Mr. Moenge for the 1st and 2nd respondents

No Appearance for the 3rd to 7th Respondents

Ms. Susan Waiganjo , Court Assistant

