



I&M Bank Limited v Gilgil Treatment Industries Ltd & another (Civil Case 418 of 2018) [2024] KEHC 7065 (KLR) (Commercial and Tax) (11 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 418 OF 2018
AA VISRAM, J
JUNE 11, 2024**

BETWEEN

I&M BANK LIMITED APPLICANT

AND

GILGIL TREATMENT INDUSTRIES LTD 1ST DEFENDANT

EQUIP AGENCIES LIMITED 2ND DEFENDANT

RULING

1. I have considered the grounds set out on the face of the Notice of Motion application dated 7th March, 2024, together with the further grounds in the supporting affidavit sworn on even date, together with the opposition to the same as contained in the Replying Affidavit sworn on 2nd April, 2023, and the rival submissions of counsel and the applicable law.
2. The issue before me is therefore, whether or not the ELC court had jurisdiction to transfer this matter from its court to the High Court?
3. I note that in the present matter, the ELC court transferred this suit to the High Court on its own volition vide its ruling dated 25th May, 2018. In its ruling, at paragraph 27, it expressly stated it had no jurisdiction to hear the matter on the basis inter-alia, that the same was subjudice.
4. Further to the above, I take note of counsel for the Applicant's submission that ELC No. 8 of 2023 was the original case number assigned to the present matter and that the Respondent filed numerous applications relating to the same subject matter with a view towards obtaining favourable orders; and that the same practice should not be permitted.
5. Having considered the submissions of the parties, which form part of the record; to my mind, the applicable law is found in the seminal case of *Abraham Mwangi Wamigwi V Simon Mbiriri Wanjiku*



Ɖ Another[2012]eKLR, in which the court set out the law relating to transfer of any suits. In the said matter, the court reiterated the principles set out in Kagenyi vs. Musiramo (supra), in which “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.”

6. Further, in the said case of Odunga, J. as he then was explained that “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.”
7. Additionally, in Republic v Karisa Chengo Ɖ 2 others [2017] eKLR, the Supreme Court of Kenya clarified that a judge takes an oath of office to the specific court that his lordship or ladyship is appointed to. It therefore follows logically, that if a matter is filed in a court without jurisdiction over the dispute, then a judge of that court also has no jurisdiction to transfer that dispute to another court because his lordship or her ladyship’s jurisdiction cannot extend beyond the jurisdiction of that particular court. Accordingly, in my view, there can be no transfer of a suit from a judge of a specialized court to a judge of the High Court, or vice versa. Our current constitutional set up quite simply prohibits the High Court from exercising jurisdiction in matters reserved for exclusive jurisdiction of the Specialized Courts and vice versa.
8. Guided by the authorities above, I am persuaded that once the ELC court determined it had no jurisdiction to hear the matter, it could not then go on to transfer the same suit from the specialized court to the High Court. Either no competent suit existed before the court, and therefore, there was nothing for it to transfer; or, if the suit was in fact competently before the ELC court, then a judge of the High Court could not also have jurisdiction to hear the same suit. The suit may be heard in one court only, be it the High Court or ELC as may be appropriate; and the same ought to be filed in the correct court from the outset. While I empathize with the Respondent in so far that the original transfer was not of its own making, the law on this issue is clear and peradventure.
9. Based on the reasons above, the 1st Defendant’s Notice of Motion dated 7th March, 2024, is with merit and the same is allowed as prayed for.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 11TH DAY OF JUNE 2024

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

.....For the Applicant

.....For the 1st Respondent/Defendant

.....For the 2nd Respondent/Defendant

