



REPUBLIC OF KENYA



KENYA LAW
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**Nephy Company Ltd & another v County Government of Nyandarua & another
(Civil Case E008 of 2021) [2023] KEHC 4157 (KLR) (8 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4157 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL CASE E008 OF 2021
GL NZIOKA, J
MAY 8, 2023**

BETWEEN

NEPHY COMPANY LTD 1ST APPLICANT

HANNAH NYAMBURA NDUGIRE 2ND APPLICANT

AND

COUNTY GOVERNMENT OF NYANDARUA 1ST RESPONDENT

COUNTY SECRETARY NYANDURA 2ND RESPONDENT

RULING

1. The subject notice of motion application herein is dated January 24, 2023, brought under the provisions of; sections 1A, 3A and 17 of the [Civil Procedure Act](#), order 51 rule 1 of the [Civil Procedure Rules](#) and Article 159 of [the Constitution](#) of Kenya.
2. The applicants are seeking for an orders that, the suit be transferred to Nyahururu High Court for hearing and disposal. The application is based on the grounds thereto and the affidavit sworn by the 2nd plaintiff/applicant.
3. She avers that, the contract which forms the subject matter herein was entered into by the parties at Ol Kalou and similarly, the respondents' office is situated at Ol Kalou in Nyandarua County.
4. That, the suit was filed at Naivasha High Court since as initially four defendants were sued and the 4th defendant's office is situate at Naivasha. However, the suit against the 4th defendant has since been withdrawn, as such it will be prudent to transfer the case.
5. However, the respondent opposed the application vide grounds of opposition dated; 7th February 2023, wherein it is argued that, this Honourable Court has no jurisdiction to transfer the suit. That the section of the law cited does not confer upon this court jurisdiction to transfer the suit instituted in the High Court.



6. I have considered the application in light of the material before the court and find that, indeed none of the provisions of the law upon which the application is premised empowers the High Court to transfer a suit from one High Court to another.
7. However, it suffices to note that, there are no express provisions under the *Civil Procedure Act*, that provides for the same. The provisions that deal with transfer of a suit relates to transfer of a suit by the High Court from one subordinate court to another or from the High Court to the subordinate court. The subject provision states: -
- (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. Therefore, any transfer of a suit from one High Court to another High Court is based on the inherent power of the court provided for under section 3A of the *Civil Procedure Act*, which states:
- “Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”
9. Furthermore, the High court has country wide geographical jurisdiction. In that regard, I associate myself fully with the observation of the court in the case of; *Hangzhou Agrochemical Industries Ltd v Panda Flowers Limited* (Civil Suit 97 of 2009) [2012] KEHC 1937 (KLR) (8 October 2012) (Ruling) where Odunga J (as he then was) cited with approval *Rapid Kate Services Limited vs. Freight Forwarders Kenya Limited & 2 Others* [2005] 1 KLR 292 where the court stated that:-
- “Although there is only one High Court in Kenya which sits in different areas as directed by the Chief Justice (as opposed to subordinate courts established under various laws) it is not forbidden for a Kenyan High Court sitting in one location to order a transmission or allocation of a case file before him to another judge sitting in another location. It must be a matter of discretion for the judge and it must be for compelling reasons which would be for the purposes of ensuring justice and this is all within the inherent power of the Court under section 3A of the *Civil Procedure Act*...Whereas there is no express provision in the *Civil Procedure Act* Cap 21 for transfer of cases from one High Court to another, it does not mean that in a proper case the Court cannot transfer a case before it to another registry of



the High Court. The fact that there is no provision on the matter cannot prevent the High Court from deciding it, if by doing so, it will be able to deliver justice. In doing so the Court will employ its unlimited and inherent jurisdiction...”

10. Similarly, the transfer of suits from one court of the High Court to another has been done as a matter of practice, in the interest of justice, expeditious and effective hearing and disposal thereof, and for cost effective purposes. But even then the key question is: what prejudice will the defendants suffer if the suit is transferred, in that they are domiciled within Nyandarua County.
11. Finally, its noteworthy that, the authorities relied on by the respondent being; *Kagenyi vs Musiramo & Another* (1968) E.A 43; *Gaikia Kimani Kiarie vs Peter Kiramba* (2020) eKLR; *Phoenix of E.A Assurance Company Limited vs S.M Thiga t/a Newspaper Service* (2019) eKLR; and *Shaban Khamis & 3 Others vs Hajj Amnai & 2 Others* (2020) eKLR, are distinguishable from the matter herein in that, they all relate to transfer of matters from the subordinate court to the High Court.
12. The upshot of the aforesaid is that, I find no merit in the objection raised against the transfer of this suit and I allow the application as prayed.
13. It is so ordered.

DATED DELIVERED AND SIGNED ON THIS 8TH DAY OF MAY 2023.

GRACE L. NZIOKA

JUDGE

In the presence of:

Mr. Ojare Peter for the plaintiff/

N/A for the respondents

Ms. Ogutu court assistant

