



**Njoroge v Munge & another (Suing as the Legal Representatives of the Estate of Simon Ole Mama Kusuuna – Deceased) (Miscellaneous Application E020 of 2023) [2023] KEHC 19956 (KLR) (10 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19956 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS APPLICATION E020 OF 2023**

**TA ODERA, J  
JULY 10, 2023**

**BETWEEN**

**PAULINA WANJIRU NJOROGE ..... APPLICANT**

**AND**

**LYDIAH NJERI MUNGE ..... 1<sup>ST</sup> RESPONDENT**

**MARY NYOKABI MBUGUA ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF SIMON OLE  
MAMA KUSUUNA – DECEASED**

**RULING**

1. The Applicant/defendant moved this Court by way of Notice of Motion dated February 9, 23 seeking transfer of the Nakuru CMCC no 1167 of 2013 Lydia Njeri Munge and Mary Nyokabi Mbugua(suing as legal representatives of the estate of Simon Ole Mama Kusuuna ) vs Paulinah Wanjiru Njoroge to the Chief Magistrate’s Court Narok for hearing and determination.
2. The Application is premised on grounds that the land parcel no Mara/Oleleshwa/1795 which is the subject matter of this suit is located in Narok county within the geographical jurisdiction of the Chief Magistrate’s Court Narok which has competent jurisdiction to hear and dispose of the suit herein. That applicant is a resident of Narok County and that the4 suit is yet to be heard and therefore it will serve the ends of justice if the suit is transferred.
3. The application is supported by an affidavit sworn by the Applicant where he stated interalia that the pecuniary jurisdiction of the Chief Magistrate’s Court at Nakuru lacks the geographical Jurisdiction to hear and determine the matter as the suit land is located in Narok County where the applicant / defendant also resides .



4. The application was served on the Plaintiffs/Respondents through their counsel on record but they neither responded nor appeared in court for filing of the application.
5. The Application was canvassed by way oral submissions. The Applicant/defendant's counsel urged this court to allow the application as prayed as it was not opposed.
6. Section 18 of the *Civil Procedure Act* that provides that:

- “(1) 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”.

7. Section 11 of the *CPA* that provides thus:

“Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts:

Provided that—

- (i) if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court; and
- (ii) nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same district”.



8. In Ugandan case of David Kabungu –Vs. Zikarenga & 4 others, Kampala HCCS NO. 36 of 1995 where it was 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 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 well established principle of law that the 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 from which transfer is sought has no jurisdiction to try the case, transfer would be refused...”

9. It is clear that the Respondents filed the said CMCC no 1167 of 2013 in the Chief magistrate’s court at Nakuru. A copy of the title deed to the suit land has been annexed to the application (“PWN2”) and it indicates that it was issued by Narok land registry and applicant also said she resides in Narok. This is not opposed. There is no doubt in my mind that the suit land is located in Narok and applicant also lives there.
10. This court takes judicial Notice that the distance from Nakuru to Narok is about 123 kilometres. Article 48 of the *constitution* provides for access to justice and reduce the distance that parties travel to reach courts. The rationale of access to justice is to bring justice closer to the people. This court has a duty to promote the same and avoid situation where parties are inconvenienced by travelling long distances to court which has serious financial implications. There was no justification for filing the suit in Nakuru instead of Narok. This suit as filed impedes the applicant’s right to access to justice under article 48 of the *constitution* and offends the provisions of section 11 of the *civil procedure Act*.
11. This court has the jurisdiction to transfer cases filed outside jurisdiction under section 18 of the *civil procedure Act*.
12. In the premises, I order that Nakuru CMCC No 1167 of 2013 be and is hereby transferred to the Chief Magistrate’s Court at Narok for hearing and determination on priority basis, it shall be mentioned before the C.M. Narok on July 31, 23.
13. Costs to the applicant.
14. It is so ordered.

**Dated, Signed and Delivered at NAKURU VIRTUALLY this 10<sup>th</sup> day of July, 2023 in the presence of;**

Koome for applicant.

No appearance for respondents.



Court Assistant: BOR

**T.A. ODERA - JUDGE**

