



Gathuo v Daniel Ndonga t/a Legend Petroleum Equipments (Miscellaneous Application 102 of 2022) [2023] KEHC 22406 (KLR) (19 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22406 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION 102 OF 2022
SM MOHOCHI, J
SEPTEMBER 19, 2023**

BETWEEN

BARTHOLOMEW GICHURU GATHUO APPLICANT

AND

**DANIEL NDONGA T/A LEGEND PETROLEUM
EQUIPMENTS RESPONDENT**

RULING

1. Through the application dated July 20, 2022 brought pursuant to Sections 3A and 18 of the [Civil Procedure Act](#), Order 51 Rule 1 and Order 8 Rule 3 of the [Civil Procedure Rules](#), the applicant herein, Bartholomew Gichuru Gathuo, seeks the following orders: -
 - a. That this Honourable Court be pleased to order the transfer of Nakuru CMCC No E125 of 2021 to High Court for hearing and determination.
 - b. That costs of this Application be in the cause.
2. The application is supported by the affidavit of the Applicant's representative Mr Odhiambo Paul Xistus and is premised on the grounds *inter alia* that the decretal sum being Ksh. 18,480,050/= exceeds the pecuniary jurisdiction of the subordinate Court
3. The Respondent through his Replying Affidavit sworn on March 20, 2023 opposed the Application on the basis that the Applicant ought to have withdrawn the aforesaid suit before the subordinate court and file afresh a suit in the High Court instead of filing the Application herein.
4. The application was canvassed through written submissions. Only the Applicant's submissions are on record.



Applicant's Submissions

5. The Applicant submitted that that this Court under Section 18 (1)(b) of the *Civil Procedure Act* has the power to transfer a suit at any stage of the proceedings even *suo moto*. In support of this proposition reliance was placed on Section 18(1)(b) of the *Civil Procedure Act* and the cases of *Oceanic Towers Limited v Hussein Builders Limited* [2021] eKLR & *AO Basid Limited v ASL Credit Limited* [2019] eKLR which quoted with approval the case *David Kabungu v Zikarengu & 4 others* Kampala HCCS No. 36 of 1995.
6. The Applicant further submitted that the Court's inherent jurisdiction to transfer suit aims to ensure a fair and just resolution of disputes before a competent Court
7. The Applicant thus urged this court do exercise its discretionary powers as provided for under Section 18(1)(b) of the *Civil Procedure Act* and allow the Application.

Analysis & determination

8. The only issue for determination is whether the orders sought are merited.
9. The jurisdiction to transfer suits flows from Section 18 of the *Civil Procedure Act* (CPA) which provides that; -
 - (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.
10. A perusal of the plaint dated January 16,2021 shows that the plaintiff seeks the following orders: - Breach of agreement dated May 22, 2017Special damages to the tune of Ksh 18,480,050/-Interest on (a) and (b) above at the prevailing commercial rates from May 22, 2017 until payment in full and final settlement.Costs of this suit together with interest thereon at court ratesAny other relief which this Honourable Court.
11. Section 7(1) of the *Magistrates Court Act, 2015* has enhanced the pecuniary jurisdiction of magistrate. It provides: -

“ Civil jurisdiction of a magistrate's court



- (1) A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed —
- (a) twenty million shillings, where the court is presided over by a chief magistrate;
 - (b) fifteen million shillings, where the court is presided over by a senior principal magistrate;
 - (c) ten million shillings, where the court is presided over by a principal magistrate;
 - (d) seven million shillings, where the court is presided over by a senior resident magistrate;
or
 - (e) five million shillings, where the court is presided over by a resident magistrate”
12. Having regard to the above cited provisions of Section 7 (1) of the Magistrates Court Act, I find that the prayers sought in the plaint exceed the Lower Court’s jurisdiction. I am not persuaded by the Respondent’s argument that the Applicant ought to have filed a suit afresh as that would further derail its determination. It is important to observe that the Court is enjoined under Article 159 of the Constitution to ensure that justice shall be administered expeditiously.
13. A further scrutiny of the pleadings reveals that in addition to the special damages, interest has ballooned to Kshs 8,201,446.19/- as at March 2, 2021 when a decree was issued.
14. This Court also under Section 1B of the Civil Procedure Act has a duty in furthering the overriding objective as provided in Section 1A of Civil Procedure Act.
15. Section 1A of Civil Procedure Act provides in part that “is to ensure the overriding objective to facilitate the just, expeditious, proportionate and affordable resolution of disputes governed by the Act”
16. My take is that Section 18 of the Civil Procedure Act grants this Court wide discretion to transfer a suit at any stage, 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, to withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter try or dispose of the same.
17. I am of the considered view that in light of the decree amount exceeding the pecuniary jurisdiction provided for and the fact that the same continues to increase it will be just and fair that the Application be allowed, the suit be transferred to the high court until determination.
18. For the above reasons, I find that the instant application dated July 20, 2022 is merited and I therefore allow it as prayed with orders that costs shall abide the outcome of the main suit.
19. An Order is hereby issued, forthwith transferring Nakuru CMCC No 25 of 2021, to the High Court for hearing and determination.

It is So Ordered

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 19TH SEPTEMBER, 2023.

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MOHOCHI S.M
JUDGE

In the presence of: -



Applicants- Odhiambo Paul Xistus & Co. Advocates

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Respondents- Mburu Maina & Co. Advocates

