



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC MISC. APPLICATION CASE NO. E035 OF 2021**

**JULIUS MWITI M'RINGERA.....PLAINTIFF**

**VERSUS**

**FESTUS MURIUNGI NAITURI (Sued as the legal representative of the estate of M'NAIRRI M'RUTERE.....DEFENDANT**

**RULING**

1. Through an application dated **17.8.2021** brought under **Section 1A, 1B and 3 of the Civil Procedure Rules** and all other enabling provisions of the laws **Julius Mwiti M'Ringera** seeks for the transfer and disposal of **Githongo ELC No. E006/2021** to **Nanyuki Law Courts**.
2. The application is supported by affidavits sworn on **17.8.2021** and **22.9.2021** respectively.
3. The grounds are that suit relates to **Land L.R Laikipia/Daiga/Block 4/924 Nyariginu**. The trial court on **11.2.2021** noted the suit ought to have been filed within Nanyuki Law Courts in which the subject land is situated and that leave to file the suit out of time had also been granted at Nanyuki Law Courts.
4. It is not clear from the supporting affidavit why the applicant filed the suit in Githongo, yet the suit land is situated in Nanyuki.
5. There is no doubt the suit was filed in the wrong court contrary to **Sections 12, 15 and 16 of the Civil Procedure Act**. Under **Section 18 of the Civil Procedure Act**, the High Court has powers to transfer a suit from one court to the other.
6. In ***Equity Bank –vs- Bruce Mutie Mutuku T/A Diani Tours & Travel [2016] eKLR***, the Court of Appeal held it would be illegal for the High Court under **Section 18 of the Civil Procedure Act** to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred.
7. In ***Mwangi Wamigwi –s- Simon Mbiriri Wanjiku & Another [2015] eKLR*** it was held where a suit is instituted in a tribunal with no jurisdiction, such suit cannot be transferred under **Section 18** of the **Civil Procedure Act** to a tribunal where it ought to have been properly instituted, since such a suit is a nullity in law.
8. In the instant case the court with territorial jurisdiction was Nanyuki Law Courts. The only option and which the applicant has is to withdraw the suit so as to pave way for the filing of a fresh suit in a court competent to try it.
9. In the circumstances the application herein lacks merit and is dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2021**

**In presence of:**

**NO APPEARANCE FOR THE PARTIES**

**COURT ASSISTANT - KANANU**

**HON. C.K. NZILI**

**ELC JUDGE**