



**THE REPUBLIC OF KENYA**

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

**MISC APPLICATION NO. E040 OF 2021**

**GEOFFREY MAINA WANJAMA**

*(Suing as the Chairman of Kamae Selfhelp Group) .....PLAINTIFF*

**VERSUS**

**THE OFFICER IN CHARGE OF KAMITI PRISON.....1ST DEFENDANT**

**THE COMMISSIONER GENERAL OF PRISONS .....2ND DEFENDANT**

**THE HON ATTORNEY GENERAL.....3RD DEFENDANT**

**RULING**

1. Through a notice of motion application dated 4/10/2021, the plaintiff sought the following verbatim orders:

***1. That the court be pleased to call for and transfer Suit No Ruiru ELC Case No E067 of 2021; Geoffrey Wanjama Suing as the Chairman of Kamae Selfhelp Group versus The Officer in charge of Kamiti Prisons & 2 others, to Thika Environment and Land Court for hearing and determination.***

***2. That costs be in the cause***

2. The application was supported by the affidavit of **Susan Kimanda** dated 4/10/2021. She deposed that the plaintiff filed **Ruiru SPMC ELC Case No E067 of 2021** on 10/5/2021, relating to Land Reference Number 24704, comprised in Title Number IR 69733, situated at Ruiru, Kiambu County. She added that on 16/8/2021, M/s **Adera Kenyatta & Company Advocates** filed an application seeking to be joined as the 4th defendant in the suit and also challenging the pecuniary jurisdiction of the magistrate court. She further deposed that the trial magistrate ordered valuation of the suit property. A valuation report was subsequently placed before the magistrate court, indicating that the suit property was valued at approximately Kshs 1,650,000,000. It was the magistrate court's position that it lacked pecuniary jurisdiction to handle the dispute and the magistrate court directed the parties to move to the appropriate court. She contended that it was just and in the interest of justice that the application herein be allowed as prayed. The respondents did not file any response to the application.

3. The court has carefully considered the application, the relevant legal framework, and the prevailing jurisprudence on the key issue in the application. The key issue falling for determination in the application is whether this court can order transfer of **Ruiru Senior Principal Magistrate ELC Case No E067 of 2021** from Ruiru Senior Principal Magistrate Court to the Environment and Land Court at Thika, in the above circumstances.

4. **Section 18** of the Civil Procedure Act gives the High Court and Courts of Equal Status with the High Court the power to transfer a case instituted in the lower courts on application by the parties or on its own motion. It provides thus:

***“18(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.”

5. The jurisprudence relating to transfer of suits from subordinate courts to the third tier superior courts is well settled. In **Kagenyi v Musiramo [1968] EA 43**, 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, in the first instance, been brought in a court which has jurisdiction to try it. In **Ali Abdi Sheikh v Edward Nderitu Wainaina & Others; HCCC No. 556 of 2009, Koome, J** (as she then was) found that since the plaintiff had filed a suit in respect of a claim to land whose value exceeded the pecuniary jurisdiction of the magistrate court, the suit could not be transferred because the general power of the High Court to transfer suits under Section 18 of the Civil Procedure Act would not be exercised in a matter where the suit was filed in a court without jurisdiction.

6. The Court of Appeal in **Phoenix of E.A. Assurance Company Limited v S M Thiga t/a Newspaper Service [2019] eKLR** emphasized that a suit filed in a court with **no** jurisdiction was not only an incompetent suit, but also a nullity *ab initio* and thus there would be nothing to transfer. It is therefore trite that where a suit is instituted in a court that does not have jurisdiction, such a suit cannot be transferred under Section 18 of the Civil Procedure Act to a court where it ought to have been properly instituted. The reason for this is that a suit filed in a court without jurisdiction is a nullity *ab initio*.

7. Further, it is now settled law that where a court finds that it has no jurisdiction, it must immediately down its tools. That position was made clear by **Nyarangi JA** in **The Owners of Motor Vessel “Lillian S” v Caltex Oil Kenya Limited (1989) KLR 1**, where the Learned Judge stated:

**“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.**

8. The reason advanced by the plaintiff/applicant in seeking the transfer of the above suit to this court is that when the valuation report was tabled in the magistrate court, it gave the estimated value of the suit property as **Kshs 1,650,000,000, which was above the pecuniary jurisdiction of the Senior Principal Magistrate Court**. Since the applicant is seeking to transfer the suit based on the fact that the magistrate court has **no** jurisdiction, the court finds that the application is **not** merited even though it was unopposed. Put differently, the suit in the Senior Principal Magistrate Court is a nullity and there is nothing to transfer.

9. The upshot of the foregoing is that the notice of motion dated 4/10/2021 is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 11TH DAY OF NOVEMBER 2021

**B M EBOSO**

JUDGE

IN THE PRESENCE OF: -

**MS KIMANGA FOR THE APPLICANT**

COURT ASSISTANT: LUCY MUTHONI

**B M EBOSO**

JUDGE