



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL CASE NO. 604 OF 2003**

**ANNE MUTHONI WAMBAA.....PLAINTIFF/APPLICANT**

**VERSUS**

**CITY COUNCIL OF NAIROBI.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**MOSES NDUNGU MUNGAI.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The application dated 12<sup>th</sup> April, 2018 seeks an order that the honourable court be pleased to transfer this suit to the Nairobi Milimani Environment and Land Court Division.
2. It is stated in the affidavits in support of the application that the suit herein concerns land parcel No. Nairobi/Block 3/1195. That the plaint herein was filed before the Environment and Land Court came into existence. The Applicant blamed the delay of the suit on the non-availability of the court file.
3. The application is opposed by the 2<sup>nd</sup> Respondent, Moses Ndungu Mungai, as per the statement of grounds of opposition dated 17<sup>th</sup> May, 2018. The grounds are as follows:  
  
**“1. The High Court does not have jurisdiction to transfer a suit from itself to the Environment and Land Court under Civil Procedure Act and Rules or under any other law. The application dated 12<sup>th</sup> April, 2018 is therefore incompetent and ought to be dismissed with costs.**  
  
**2. Power of the High Court for transfer of suits under Section 17 and 18 is limited only to subordinate courts. Courts of equal status created under Article 162 (2) of the Constitution for Labour Relations and Environment and the use and occupation of the title to land case are not subordinate to the High Court, consequently there is no jurisdiction of power by the High Court to the Environment and Land Court.**  
  
**3. The Plaintiff has been extremely indolent in the prosecution of its suit and is thus guilty of laches. This suit was filed in the year 2003 and it has never been prosecuted for about 15 years.”**
4. The 2<sup>nd</sup> Respondent also filed a replying affidavit. It is averred that the 2<sup>nd</sup> Respondent is the owner of the plot the subject of the suit. The 2<sup>nd</sup> Respondent decried the delay in this suit.
5. The application was disposed of by way of written submissions. I have considered the application, the response to the same and the submissions filed.
6. There is no contestation herein that the subject matter of this suit is the ownership of land and therefore falls within the jurisdiction of the Environment and Land Court. The suit herein was filed in the year 2003 in the High Court which had the requisite jurisdiction before the Environment and Land Court came into existence. Whether there has been delay before this application at hand was made is a matter that can only be addressed in an appropriate application.
7. Even in cases filed in this court and without jurisdiction, this court is bound by the position taken by the Court of Appeal in the case of **David N Mugendi v Kenyatta University & 3 others [2013]eKLR** which was quoted in the case of **Ernest Kevin Luchidio v Attorney General & 2 others [2015] eKLR** which was relied on by the defence. The Court of Appeal stated as follows:

**“.....in endeavouring to meet the ends of justice untrammelled by procedural technicalities, we set aside the order striking out the appellant’s petition and direct that the High Court do transfer it to the Industrial Court which also has jurisdiction and authority to consider the claims of breach of fundamental rights as pertain to industrial and labour relations matters. It is only meet and proper that the Industrial Court do exclusively entertain those matters in that context and with regard to Article 165(5)(b). And in order to do justice, in the event where the High Court, the Industrial Court or the Environment & Land Court comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar/equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time as the citizenry is well acquainted with the appropriate forum for each kind of claim. However, parties should not file “mixed grill” causes in any court they fancy. This will only delay dispensation of justice.”**

8. With the foregoing, I allow the application with costs in cause. The suit is hereby transferred to the Environment and Land Court.

**Dated, signed and delivered at Nairobi this 8<sup>th</sup> day of April, 2019**

**B. THURANIRA JADEN**

**JUDGE**