



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELCL MISC. APPLICATION NO. E034 OF 2025

LAWRENCE NJOROGE.....

APPLICANT

VERSUS

KEZIAH WAITHIRA.....

.....RESPONDENT

RULING

1. By Notice of Motion dated **12/03/2025**, the Applicant seek the following Orders:
 - 1) Spent.
 - 2) The Honorable Court be pleased to order transfer of **RUIRU CMELC Case No. E240 of 2024 (*Lawrence Njoroge vs Keziah Waithira*)** from the Chief Magistrate's Court to the Environment and Land Court.
 - 3) THAT upon transfer, this Court be pleased to set the suit for mention for pre-trial directions.
 - 4) THAT the costs of this application be provided for.
2. The Application is based on the grounds on the phase of it and the Supporting Affidavit sworn by Lawrence Njoroge the Applicant on even date.
3. It is the Applicant's averment that he filed a suit on 2/12/2024 in the Chief Magistrate's Court at Ruiru seeking proprietary reliefs against the Defendant over a parcel of

land Title Number Ruiru/Ruiru West Block 3/146 that is the subject matter of the said suit.

4. That there was contestation between the parties on the value of the suit property and then the Court directed the parties to have the property valued. The Plaintiff filed his Valuation Report dated 20/06/2024 for Kesh 15,000,000 as per annexure '**LN-3**' while the Respondent's Valuation Report dated 26/02/2025 placed the value at Kesh 23,000,000.
5. Given the conflicting valuations of the land and due to the fact that by the time of the Judgment the value of the land would have escalated beyond the lower's Court's jurisdiction, Hon Joseph Were Chief Magistrate through a Ruling dated **30/04/2025** as per annexure '**LN-2**' directed that the suit be heard by a Court that has unlimited jurisdiction.
6. Thus, the Magistrate directed that the suit be transferred to this Court within 45 days of the Ruling. It is the Applicant's averment that the filing of the suit in the Chief Magistrate's Court was an inadvertent error on the part of the Applicant's Counsel based on honest belief and reliance on the Valuation Report by the Ministry of Lands dated 20/06/2024 that placed the value at Kesh 15,000,000.
7. In response, the Respondent filed a Replying Affidavit sworn on 10/06/2025 in which she deposed that since the Court delivered a Ruling where it found that it did not have jurisdiction to hear and determine the matter as the value of the suit property exceeded the pecuniary jurisdiction, then

the Court must immediately down its tools and as such, the Court at Ruiru cannot transfer the suit **CMELC No. E240 of 2024** to a Court of competent jurisdiction.

8. That the Applicant's reliance on Section 18 of the Civil Procedure Act is misconceived as that does not apply here the Court transferring the matter lacks jurisdiction from the beginning.
9. That since jurisdiction is not a matter of discretion or convenience but a matter of law then allowing this application would amount to an error in law as the Chief Magistrate's Court at Ruiru has no jurisdiction to transfer the instant suit. Thus, the application should be dismissed with costs.
10. In giving a brief background of the case, the Plaintiff/Applicant stated that in filing the suit he relied on the valuation reports by the Ministry of Lands for valuation of stamp duty and a private valuer's report both dated 20/06/2024. However, that the Respondent raised a Preliminary Objection dated 10/12/2024 challenging the pecuniary jurisdiction of the Court to hear and determine the matter based on her own private Valuation Report.
11. The Court then directed that the parties file their respective Valuation Reports on the subject property to enable the Court inform itself on its pecuniary jurisdiction before hearing of suit. On 30/04/2025, the Court delivered a Ruling where it expressed its uncertainty due to the conflicting Valuation Reports presented by each party and deciding to

be on the safe side of both parties' hearing and determination of the dispute held that it would be prudent that the matter be transferred to an appropriate Court for determination.

12. The Plaintiff submitted that the Learned Magistrate in his Ruling had stated that the Court would risk being bereft of jurisdiction by the time of delivery of Judgment as the property would continue to appreciate.

13. In his submission the Plaintiff noted that the only issue for determination was whether the **MCELC E240 of 2024** should be transferred to this Honourable Court.

14. The gist of his submissions is that Article 159 (2) (d) of the Constitution implores Courts to administer justice without undue regard to procedural technicalities. He submitted that he relied on the valuation by the Ministry of Lands dated 20/06/2024 and another valuation by a private valuer dated 20/02/2024. He believed that then the lower Court was the right forum where he could file the instant suit.

15. According to the Plaintiff, the Respondent's Valuation is the one that brought to the fore the issue of pecuniary jurisdiction and the Court directed parties to file their separate valuations. The conflicting Valuation Reports led the Magistrate to rule that the instant suit be transferred in line with

Article 159 (2) (d). The Plaintiff submitted that the Magistrate did not want to render the process moot after delivery of judgment due to pecuniary limitations of the Subordinate Court.

16. The Plaintiff has relied on the cases of **Raila Odinga vs IEBC and 4 Others Petition (No. 5 of 2023)**, **Shabbir Ali Jusab vs Anaar Osman Gamrai & Attorney General [2023] KESC 9 (KLR)**, **Equity Bank Limited vs Bruce Mufuku t/a Diani Tour & Travel [2016] KECA 250 (KLR)**, **Heinz Isbrecht vs Charles Ochieng Ndiga (Msa) Misc. Application No 20 of 1997**, **Hangzhou Agrochemical Industries Ltd vs Panda Flowers Limited (Civil Suit 97 of 2009) [2012] KEHC 1937 (KLR) (Civ) (8 October 2012)**, **Kenya Commercial Bank Ltd vs Kenya Planters Co-operative Union (2010)eKLR**, and **George Mwongera Mwendameru vs Loise Gaki (Misc. App. No. 70 of 2015)**.

17. The Plaintiff has underscored the Courts' findings in the above-referenced cases and also stated that if the matter had remained in the Magistrate's Court it would have been a mere academic exercise between the parties without resolving the outstanding dispute since the Court lacked jurisdiction.

18. Also, the Plaintiff submitted that Courts have

emphasized the need to avoid procedural rigidity that undermines access to justice. Further that this Court is vested with wide and unfettered discretion to transfer suits in the interest of justice as per Section 18 of the Civil Procedure Act. Thus, that this Court being vested with unlimited jurisdiction is the appropriate Court to hear and determine the matter on its merits. The Plaintiff urged the Court to effect the holding of the Magistrate Court and grant the orders sought in the instant application and have the matter transferred for effective hearing and determination of the suit.

19. In reply, the Respondent filed her Replying Affidavit and identified one issue for determination being; whether the suit filed at the Ruiru Chief Magistrate's Court should be transferred to the Environment and Land Court at Thika.

20. In the submissions filed by the Respondent she reiterated the contents in the Replying Affidavit averring that the Applicant did the valuation during construction on the suit property but when the construction was complete the suit property's value shot up. Further that the valuer who undertook valuation whose report is dated 20/06/2024 stated that they had not been allowed to examine the interior of the suit property. Giving a wrong assessment of the suit property

21. The Respondent also submits that from the Preliminary Objection that she filed the Chief Magistrate in his Ruling admitted lacking jurisdiction and that it was therefore

required of him to down his tools since he had no capacity to transfer the suit.

22. According to the Respondent the Applicant's Miscellaneous Application is a nullity and it should be dismissed with costs to the Respondent for being devoid of merit.

23. The Respondent relied on the cases of **Equity Bank Limited vs Bruce Mutie Muwku T/A Diani Tour & Travel (Supra), Abraham Mwangi Wamigwi vs Simon Mbiriri Wanjiku & Another [2012]eKLR, Macfoy vs United Africa Co. Ltd [1961] 3 All ER, 1169, Motor Vessel Lillian "S" v Caltex Oil (Kenya) Ltd [1989] eKLR, Mini Bakeries (NRB) Limited vs Levi Kariz Oriedo (2020)eKLR, and Tata Chemicals Magadi Limited vs County Governor, Kajiado County & Another; National Environmental Management Authority & Another (Interested Parties) (2020)eKLR.**

24. The gist of what the Respondent sought to emphasize with the cases above is that a Court without jurisdiction cannot exercise powers such as transferring a suit to another Court. In conclusion, she urged the Court to dismiss the application.

Analysis and Determination

25. This Court has carefully read and considered the Application, the rival Affidavits and the written submissions and the issues that arise for determination are:-

- i. **Whether the Magistrate's Court had jurisdiction to entertain the suit when it was filed;**
- ii. **Whether this Court has the power to transfer the suit from the Subordinate Court to the Environment and Land Court; and**
- iii. **Who shall bear the costs of this suit?**

26. On the first issue, I have considered the rival submissions made before me by the parties to this application. I have also considered the decided cases that were referred to me by the Learned Counsel for the Respondent and the Applicant. The law relating to transfer of suits is very clear. An order for the transfer of a suit from one Court to another cannot be made unless the suit was in the first instance commenced in a Court which had jurisdiction to try it. If that suit was commenced in a Court that had no jurisdiction to entertain the dispute, it would then mean that the said suit is a nullity in law and is incompetent. Consequently, the Court would not have jurisdiction to transfer the matter to any other Court.

27. It follows therefore, that the power to transfer a case from the Subordinate Courts to the High Court and Courts of equal status for hearing may only be exercised if the Court in which it was commenced is a Court vested with competent jurisdiction over the dispute. It is for this reason that there is need to explore whether **RUIRU CMELC Case No. E240 of 2024 (Lawrence Njoroge vs Keziah Waithira)** was filed

in a Court seized with jurisdiction to entertain the claim made by the Applicant before the Subordinate Court.

28. In **Macharia & Another vs Kenya Commercial Bank Limited & 2 Others (2012) KESC 8 (KLR), the Supreme Court of Kenya** held that a Court's jurisdiction flows from either the Constitution or Legislation or both. Further, that a Court of law can only exercise the jurisdiction conferred to it by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.

29. Certain facts are not in dispute in this application. It is not disputed that the Applicant filed a suit at the Chief Magistrate's Court Ruiru over a property whose subject matter was valued at Kshs 15,000,000 million. It is not disputed that the Applicant realized after the Court ordered valuation that the said suit was filed before the said Subordinate Court whose pecuniary jurisdiction is Kshs 20,000,000 million. However, when the Respondent filed their valuation, it was realized that the value of the suit property is well over Kesh 20,000,000.

30. The Applicant has submitted that this Court has jurisdiction to transfer the suit from the Subordinate Court to the Environment and Land Court, a Court which has jurisdiction, for hearing and final disposal. On her part, the Respondent has submitted that this Court lacked jurisdiction to transfer a suit from a Court which lacked jurisdiction to a Court with jurisdiction.

31. Ringera J in **Omwoyo -vs- African Highlands and Produce Limited [2002]1KLR 698** held that:

“(in) Kagenyi -vs- Misiramo & Another [1968]E.A. 48 Sir Udoma CJ held in relation to Section 18 of the Uganda Civil Procedure Act - a provision which is in pari materia with Section 18 of our Code - that an order for transfer of a suit from one Court to another cannot be made unless the suit has been in the first place brought to a Court which has jurisdiction to try it. In that case, the appellant had sought to transfer a suit from the magistrate’s Court to the High Court on the basis that the claim exceeded the pecuniary jurisdiction of the lower Court.... The principle of law to be gleaned from those authorities is that the High Court cannot exercise its discretion to transfer a suit from one Court to another if the suit is filed in the first place in a Court which does not have pecuniary and/or territorial jurisdiction to try it. That is the case here. The Nairobi Resident Magistrate’s Court did not have jurisdiction to entertain the Plaintiff’s suit as the lowest Court of competent jurisdiction to handle it was the Kericho Magistrate’s Court. The application fails for that reason only.”

32. However, under Section 18(1) of the Civil Procedure Act, this Court may exercise its supervisory jurisdiction, to withdraw

or transfer suits for trial and final disposal by itself or other Courts subordinate to it. This law as already intimated to hereinabove also gives the Court the general power to transfer suits, which power may be exercised at any stage of the proceedings. A Court may do so either on application by a party or ***suo moto***.

33. It is a well-established principle of law that, when the transfer is at the instance of a party then the burden lies on the Applicant to make out a strong case for the transfer. In **Equity Bank Limited vs Bruce Mutie Mutuku t/a Diani Tour Travel (supra)**, the Court of Appeal held as follows:

“In numerous decided cases, Courts, including this Court have held that it would be illegal for the High Court in exercise of its powers 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. Jurisdiction is a weighty fundamental matter and to allow a Court to transfer an incompetent suit for want of jurisdiction to a competent Court would be to muddle up the waters and allow confusion to reign. It is settled that parties cannot, even by their consent confer jurisdiction on a Court where no such jurisdiction exists. It is so fundamental that where the Court lacks

jurisdiction parties cannot even seek refuge under the O2 principle or the overriding objective under the Civil Procedure Act, the Appellate Jurisdiction Act or even Article 159 of the Constitution to remedy the same...”

34. Some of the matters to be taken into consideration are the 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.

35. Additionally, the power under Section 18 of the Civil Procedure Act refers to competent suits filed in Courts seized with the requisite jurisdiction to entertain them. The general power of the Court to transfer suits under Section 18 of the Civil Procedure Act cannot therefore be exercised in a matter where the suit was filed in a Court without jurisdiction.

36. The Supreme Court case of **Albert Chaurembo Mumba and 7 Others vs Maurice Munyao & 148 Others (2019) eKLR** held that:-

“However, as it was well elucidated in the case of Kagenyi vs Musiramo & Another (1968) EALR 43, an order for transfer of a suit from one Court to another cannot be made unless the suit has been brought, in the first instance, to a Court which has jurisdiction to try it. It’s therefore irrelevant as parties cannot consent to confer jurisdiction to

a Court or tribunal where it is not provided by law.”

37.It is therefore obvious from the analysis that the Chief Magistrate’s Court had no jurisdiction to entertain the suit before it. That determination arises not from a newly enacted statute, but from an interpretation of existing statutes by a Superior Court. For this reason, the only logical conclusion to be made is that the instant application fails to meet the threshold for an order to have the Subordinate Court case transferred for hearing and determination before the Environment and Land Court.

38.The second issues is therefore equally determined.

39.The Court’s duty does not extend to upholding an illegality by legitimising an incompetent suit. Lord Denning in the case of **Macfoy vs United Africa Co Ltd (supra)** stated that:-

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse ...”

40.In any event, the matter has not been heard and determined, thus the Magistrate’s Court should have struck

it out, leaving the Applicant with the option to file it afresh in the appropriate Court for hearing and determination without triggering the doctrine of Res Judicata. In the same breadth, the Applicant is also at liberty to withdraw the suit and file it afresh in this Court.

41. In the circumstances of this case, it is clear that the Applicant seeks to transfer the suit from the Subordinate Court to the Environment and Land Court so that he could clothe its incompetent suit with jurisdiction. I agree with the dictum of Mwera J. in **Joseph K. Gitau -vs- Francis Waiagwa Waithaka & Another Nairobi HCMisc Civil Application No. 53 of 2002 (unreported)** where he held that the High Court could not exercise its jurisdiction as provided by Section 18(1) of the Civil Procedure Act to transfer a suit from a Court without jurisdiction to a Court with jurisdiction.

42. He held that the High Court could not transfer a case which in his opinion was a nullity to the High Court for hearing and disposal. The upshot of the above reasons is obvious. The Applicant has not satisfied this Court that the suit now pending before the Subordinate Court was competently filed before the said Court and is therefore amenable to be transferred to another Court, in this case the Environment and Land Court, a Court of competent jurisdiction. The Applicant's application therefore lacks merit.

43. The suit before the Chief Magistrate's Court is not only an incompetent suit, but also a nullity in law. As a result, there

is nothing to transfer. The Applicant has not satisfied this Court that he is entitled to the orders sought.

Disposal Orders

44. Consequently, the application dated 12/03/2025 is devoid of merit and the same is dismissed with costs to the Respondent.

45. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 20TH DAY OF JANUARY, 2026 VIA MICROSOFT TEAMS.

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**MOGENI J
JUDGE**

In the presence of:

Mr. Nkomejimana for the Applicant
Respondent - Absent
Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**