



Kiruja & another (Suing as the Administrators and Legal Representatives of the Estate of Julius Kiruja M’mbwithia - Deceased) v Mbwithia & 3 others (Miscellaneous Application E017 of 2023) [2024] KEELC 988 (KLR) (21 February 2024) (Ruling)

Neutral citation: [2024] KEELC 988 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
MISCELLANEOUS APPLICATION E017 OF 2023
CK NZILI, J
FEBRUARY 21, 2024**

BETWEEN

ZAKAYO GITUMA KIRUJA 1ST APPLICANT

JOHN MURIUNGI KIRUJA 2ND APPLICANT

**SUING AS THE ADMINISTRATORS AND LEGAL REPRESENTATIVES OF
THE ESTATE OF JULIUS KIRUJA M’MBWITHIA - DECEASED**

AND

FRANCIS KABURU MBWITHIA 1ST RESPONDENT

NDATHO MBWITHIA 2ND RESPONDENT

AYUB MUTUMA M’ITUNGA 3RD RESPONDENT

SIMEON MUTUMA 4TH RESPONDENT

RULING

1. The court is asked to transfer Githongo ELC Case No. E025 of 2021 to Nkubu Law Courts for consolidation with ELC No. 2020 for hearing. The reasons are contained on the face of the application and a supporting affidavit sworn by Zakayo Gituma Kirunja on 24.10.2023. It is averred that the subject matter in the two suits is L.R No. Abothuguchi/Kariene/3000, where the 4th respondent herein is the plaintiff in the Nkubu Law Court case while the applicants are the plaintiffs in the Githongo Law Courts case as per the attached pleadings marked ZGK1 (a) & (b). Further, the applicants aver none of the parties was likely to be prejudiced if the orders sought were granted. The application was served upon the respondents on 20.11.2023 and an affidavit of service was duly filed on 22.11.2023.
2. To transfer a suit from one subordinate court to another is a power granted to this court under Sections (18) 1 (b) of the *Civil Procedure Act* to act either suo moto or upon an application by any party. The



considerations include balance of convenience, questions of expense, interest of justice and possibilities of undue hardship.

3. In this application, the reasons given are that the parties are the same, the subject matter is the same, and issues of dispute are also common, though arising in two different suits in two separate courts.
4. In the circumstances, the jurisdiction of this court is appropriately invoked and hence grants the orders sought. There would be no order as to costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
ON THIS 21ST DAY OF FEBRUARY 2024**

In presence of

C.A Kananu

Miss Mugo for applicant

HON. CK NZILI

JUDGE

