



George N Kimani & Co Advocates v Mbugua & another (Environment & Land Miscellaneous Case 34 of 2021) [2024] KEELC 3577 (KLR) (11 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3577 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND MISCELLANEOUS CASE 34 OF 2021
LA OMOLLO, J
APRIL 11, 2024**

BETWEEN

GEORGE N KIMANI & CO ADVOCATES APPLICANT

AND

DAVID KAHURIA MBUGUA 1ST RESPONDENT

MARGARET WANJIRU KAHURIA 2ND RESPONDENT

RULING

Introduction

1. This ruling in respect to the Applicants Notice of Motion application dated 3rd April, 2023. The said application is expressed to be brought under Section 3, 3A and 18(1) of the *Civil Procedure Act*, Section 48 of the *Advocates Act* and Article 165 of the *Constitution* of Kenya.
2. The application seeks the following orders:
 - a. Spent
 - b. That the Honourable Court do order that the entire matter Elc Misc No 34 of 2021 Bill of Costs dated 3rd June, 2021 herein and the entire pleadings and proceedings be referred and transferred for hearing and determination to Naivasha High Court and be placed before Deputy Registrar, Naivasha High Court for directions and taxation as circumstances deserves.
 - c. That the Honourable court do transfer the entire file to Naivasha High Court for processing, hearing and determination interalia.
 - d. That this matter be mentioned before Deputy Registrar, Naivasha for further directions.
 - e. Any other order that may deem fit.



3. The application is based on the grounds on its face and is supported by the affidavit sworn by one George Ndungu Kimani. The Supporting affidavit is sworn on 3rd April, 2023.

Factual Background.

4. The matter came before court on 24th July, 2023 in the presence of counsel for the Applicant and the Respondents. Counsel for the Applicant informed court that an advocate client bill of costs has been filed in the lower court. The court directed that the application dated 3rd April, 2023 shall be heard on 11th October, 2023.
5. On 11th October, 2023, parties informed the court that they had not filed their submissions and the court directed that the matter be mentioned on 7th November, 2023 to confirm filing of submissions.
6. On 7th November, 2023, parties confirmed that they had filed their submissions and the application was then reserved for ruling.

Applicant's Contention.

7. The Applicant deposes that he is an advocate of the High Court of Kenya practicing under name and style of G.N Kimani & Co Advocates. He deposes that previously the advocate/client bill of costs was presented at Naivasha High Court for filing but the officials declined to receive the same and insisted that since this was a land matter Nakuru High Court land division was the one seized with administrative jurisdiction.
8. It is his deposition that together with his filing assistant, they protested this position but the registry officials declined to the lodging of the Bill of Costs at Naivasha High Court registry citing new administrative regulations.
9. He contends that on 30th March, 2023 before Hon. Rose Ombata in Misc ELC No 35 of 2021 as a way of acknowledging the applicant's position, it was observed that it is only fair that further direction on transfer of the matter to High Court, Naivasha be made.
10. The Applicant seeks that the entire file, pleadings and proceedings in this matter and Misc ELC No 35 of 2021, George N. Kimani & Co advocates versus How Kenya Limited be laid before the Honourable Judge for directions on issue of further handling.

Respondents Response.

11. The Respondents did not file a response.

Issues for Determination.

12. The Applicant filed submissions on 17th October, 2023.
13. The Applicant submits that he acted and represented the Respondents in a lower court case matter Naivasha ELC No 56 of 2018. He submits that the advocate-client Bill of Costs dated 3rd June, 2021 was drawn and filed in the instant miscellaneous application.
14. He submits that the lower court matter was domiciled in Naivasha Chief Magistrate's Court. He submits that at filing, the Naivasha High Court Registry officers directed that the Advocate Bill of Cost ought to be filed in Nakuru High Court ELC Division since the lower court matter was a land related matter and that all the matters involving land according to the registry officials were not being lodged at Naivasha High Court since there is no High Court Land Deputy Registrar/tax master.



15. The Applicant submits that despite insisting that the matter ought to be filed at Naivasha High Court for taxation before the Deputy Registrar in accordance with Section 13 of the *Advocates Remuneration order* agree to have the same filed at Nakuru (sic).
16. He submits that the matter was a series and in Miscellaneous ELC No 35 of 2021 Honourable Ombata directed that these matters should administratively go back to Naivasha for redirection and taxation.
17. The Applicant submits that since the High court has supervisory power of all the other courts under Article 165 (6) and (7) can do a reference to another High Court be it from Nakuru, Naivasha and or vice-versa. He submits that the application herein is more administrative and does not raise any legal issue.
18. He submits that no prejudice shall be suffered by the Respondent once a High court matter is referred to another High court within the same county for administrative directions by the Deputy Registrar.
19. He submits that the Respondent shall benefit from the orders sought since the matter will proceed faster as the lower court file will be at the same court for reference if need be.
20. The applicant relies on the case of *Benson Makori Makworo v Nairobi Metropolitan Services & 2 others* [2022] eKLR. He submits that the High Court has the ability to refer matters for determination before other jurisdictions and he prays that the application be allowed.
21. The Respondents filed their submissions on 6th November, 2023. They submit that the Applicant is the one who filed the same taxation matter in the current Nakuru High Court and ought not to blame the court for his deeds or misdeeds. They submit that this matter is awaiting Ruling in regards to the taxation as per the records and proceedings.
22. The Respondents submit that the parties have filed submissions in the taxation matter and therefore it shall save the court time to proceed and make a ruling on this application.
23. They submit that if the court decides to transfer the matter to Naivasha Law Courts then the same ought to be limited for the ruling of the taxation since all the parties had filed their documents and submission.
24. The Respondents pray that the Applicants be condemned for costs of the application and delay occasioned by his actions.

Analysis and Determination.

25. I have considered the application, the affidavit in support of the application and submissions filed.
26. In my view the single question that arises for determination is:
 - a. Whether ELC Misc. No 34 of 2021 Bill of Costs dated 3rd June, 2021 should be referred and transferred for hearing and determination before the High Court at Naivasha.
27. The Applicant has approached this court under provisions of Section 18 (1) of the *Civil Procedure Act*. It provides as follows:

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.
28. The Applicant in his application states that the lower court file is at Naivasha Magistrate court and it is effective to have this matter heard and determined in Naivasha High Court.
29. The Applicant has also approached this court on the ground that that it was referred by staff at Naivasha registry to file this matter at Nakuru Court.
30. The Respondents in their submissions state that if the Court decides to transfer the matter to Naivasha Law Courts then the same ought to be limited for the Ruling of the taxation since all the parties had filed their documents and submission.
31. In the judicial decision of *Hangzhou Agrochemicals Industries Ltd V. Panda Flowers Ltd* (2012) eKLR the court had this to say in relation to the conditions to be considered in determining whether or not to transfer a suit:
- “...In my view, which view I gather from authorities and from the law, the court should consider such factors as the motive and the character of the proceedings, the nature of the relief or remedy sought, the interest of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. 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. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case.”
32. I must also mention that subsequent to the filing of this application, the Environment and Land court sitting at Naivasha was gazetted and operationalized. The administrative challenged that may have presented prior to the filing of this application are now in the past.
33. The Applicant is also reminded that the Environment and Land Court is a court whose status is equal to that of the High Court and not a division of the High Court.
34. This court finds that it is convenient and in the interest of justice that this file be mentioned before the Deputy Registrar, Environment and Land Court sitting at Naivasha for further directions.

Disposition.

35. Consequently, the application dated 3rd April, 2023 is allowed in the following terms:



- a. ELC Misc. Application No. 34 of 2021 dated 3rd June, 2021 is hereby transferred to the Environment and Land Court sitting at Naivasha.
- b. ELC Misc. Application No. 34 of 2021 shall be placed before the Deputy Registrar, Naivasha Environment and Land Court for directions and/or taxation as circumstances demand.
- c. Each party shall bear own costs in respect of the application.

36. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 11TH DAY OF APRIL, 2024.

L. A. OMOLLO

JUDGE

In the presence of: -

No appearance for the Applicant.

No appearance for the Respondent.

Court Assistant; Mr. Joseph Makori.

