



**County Government of Wajir v Maalim (Environment & Land Case
E001 of 2023) [2024] KEELC 6321 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6321 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT GARISSA
ENVIRONMENT & LAND CASE E001 OF 2023
JM MUTUNGI, J
SEPTEMBER 26, 2024**

BETWEEN

COUNTY GOVERNMENT OF WAJIR PLAINTIFF

AND

BULLIE AHMED MAALIM RESPONDENT

RULING

1. The Plaintiff/applicant vide the Notice of Motion application dated 23rd October, 2023 prays for the following substantive order:-

That this Honourable Court be pleased to transfer this suit to SPM Court Wajir for hearing and disposal alongside Garissa ELC No. 2 of 2023 (County Government of Wajir v Telkom Kenya Ltd & Abdirahman Mohamed Abdille) (Already transferred to Wajir SPM's Court).

2. The application is supported on the grounds set out in the body of the application and on the Affidavit sworn in support of the application by Naema Ibrahim, County Attorney Wajir County on 23rd October 2023. In support of the application the Applicant avers that it filed 2 suits being Garissa ELC 1 & 2 of 2023 relating to 2 adjoining and overlapping parcels of land where Soko Mjinga Market within Wajir Town is located. The Applicant stated that this Court on 28th July 2023 made an order transferring Garissa ELC No. 2 of 2023 – County Government of Wajir v Telkom Kenya Ltd & Another to Wajir SPM's Court for hearing and determination following an application by the Applicant seeking the transfer of the same on the basis that the Lower Court possessed the requisite pecuniary jurisdiction to handle the matter. The Applicant asserted that the value of the 2 adjoining plots fell within the pecuniary jurisdiction of the Wajir SPM's Court. The Applicant further asserted it would be fair and in the best interest of Justice to have the two suits heard together by the same Court as the plots in question were adjoining and overlapping.



3. The Respondent opposed the application for transfer vide a Replying Affidavit sworn by the Respondent on 30th November 2023. The Respondent deponed that he was the bonafide registered proprietor of L.R No. 13607/249 Wajir Township for a leasehold term of 99 years from 1.5.1994. The Respondent further averred that the suit property LR No. 13607/249 was different from the suit property in ELC No. 2 of 2023 that was transferred to Wajir SPM's Court and that at any rate the Respondent was neither a party in ELC No. 2 of 2023 and neither was he heard in the application that resulted in the transfer of the suit to the SPM's Court Wajir.
4. The Respondent contended that the Court's power to order transfer of a suit was discretionary and a basis had to be laid to warrant the exercise of such discretion and the Applicant had not laid any such basis. The Respondent further averred that though the Applicant had based the application for transfer on the fact that the Lower Court possessed the pecuniary jurisdiction to hear the matter, there was no demonstration of the value of the suit property.
5. The Respondent further stated that the ownership of the suit property was determined in a suit before the PM's Court Wajir ELC No. 003 of 2022 – Bulle Ahmed Maalim v Hassan Farah & 13 Others where the Applicant had unsuccessfully sought to be joined as a party and that the Applicant was not acting in good faith in seeking to have the suit transferred to the same Court. The Respondent averred that the Applicant had not demonstrated they would suffer any prejudice if the matter is not transferred.
6. The parties canvassed the application by way of written submissions. The Plaintiff/Applicants submissions dated 15th April 2024 on record relate to the Applicants Notice of Motion application dated 10th March 2023 seeking injunctive orders against the Defendant/Respondent. The Plaintiff/Applicant apparently did not file any submissions in regard to the application for the transfer of the suit dated 23rd October 2023. The Respondent for his part, filed his submissions dated 19th May 2024 only in respect of the application for transfer of the suit and not in respect of the application for injunctive relief.
7. The application for the transfer of the suit to the Wajir SPM's Court is clearly wrongly premised under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules and Order 51 Rule (1). Section 80 Civil Procedure Act and Order 45 of the Civil Procedure Rules deal with review of Judgment, decrees or orders and not transfer of suits which are dealt with under Section 18 of the Civil Procedure Act which provides as follows:-
 - (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) 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 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.
8. Only a suit instituted before a competent Court and with jurisdiction can be transferred to another Court. See the Case of *Equity Bank Ltd v Brian Mutie Mutuku T/A Diani Tour Travel* (2016) eKLR and *Abraham Mwangi Wamigwi v Simon Mbiriri Wanjiku & Another* (2012) eKLR.
 9. In the instant suit I understand the Plaintiff/Applicant to be seeking a transfer of the suit, firstly because they aver the SPM's Court Wajir has the pecuniary jurisdiction; and secondly because a somewhat related case (ELC No. 2 of 2023 Garissa) where the Defendant/Respondent is not a party was transferred; and thirdly the two parcels of land in the two suits are adjoining and overlap and are situate at what is described as Soko Mjinga Market, Wajir Town. No evidence of the value of the plots has been exhibited by any party and hence the value of the plots cannot be ascertained. The Defendant/Respondent holds a registered title to a distinct parcel of land, and is not a party to ELC No. 2 of 2023 Garissa transferred to Wajir SPM's Court and was not heard in the application that yielded the transfer of the suit. Whether or not the parcels of land overlap will be a matter of evidence to be adduced at the trial.
 10. The application before the Court is not one for the consolidation of the suits but transfer. The considerations in an application for consolidation are different from those for a transfer of a suit. It is noteworthy that in fact the Plaintiff/Applicant filed the two suits on the same date (15.3.2023) at the ELC Garissa and in doing so, must have considered that the suits were distinct and separate and capable of being heard separately. The ELC has both original and appellate jurisdiction. There can be no doubt that any ELC Magistrate's Court matter that a Magistrates Court can handle can be handled by the Environment and Land Court. Before a transfer of a suit from one Court to another, the Applicant must satisfy the reasons for doing so to forestall abuse of the process and to curtail what would amount to forum shopping.
 11. In the instant, matter I am not satisfied any credible basis has been furnished to warrant an order of transfer of the suit from this Court to the Wajir SPM's Court. The Plaintiff's/Applicant's Notice of Motion application dated 23rd October 2023 lacks merit and is ordered dismissed.
 12. As relates to the Plaintiff/Applicant's Notice of Motion application dated 10th March 2023 for injunctive relief, I note that the ownership of land parcel LR No. 13607/249 registered in the name of the Defendant/Respondent is contested. The Plaintiff alleges the Defendant was fraudulently registered and issued title and prays for the cancellation/revocation of the title and issue of a permanent injunction.
 13. I take cognisance that the issue of ownership can only be determined after hearing evidence at the trial. It is in the premises necessary to preserve the subject matter of the suit and in the circumstances the orders that commend themselves to the Court and which I hereby make are as follows:-
 - i. That the parties shall observe and maintain the prevailing status quo as relates to the suit property pending the hearing and determination of the suit.
 - ii. No party shall sell, subdivide, transfer or charge the suit property pending the hearing and determination of the suit.
 - iii. The parties shall comply with Order 11 of the *Civil Procedure Rules* within the next 45 days from the date of this ruling.



- iv. Each party to file and serve a paginated triable bundle comprising the pleadings, all documents and witness statements within the period as in (iii) above.
- v. Mention on 27/11/2024 to confirm compliance and for pretrial directions.
- vi. The costs of the application shall be in the cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 26TH DAY OF SEPTEMBER 2024.

J. M. MUTUNGI

ELC – JUDGE

