



REPUBLIC OF KENYA



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Walumbe & another v Tuti Holdings Limited & 3 others (Miscellaneous Application E004 of 2024) [2024] KEELC 7438 (KLR) (24 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7438 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
MISCELLANEOUS APPLICATION E004 OF 2024**

**EC CHERONO, J
OCTOBER 24, 2024**

BETWEEN

JAINTA ANYANGO WALUMBE 1ST APPLICANT

BENINAH MATATA WALUMBE 2ND APPLICANT

AND

TUTI HOLDINGS LIMITED 1ST RESPONDENT

ERICK MAHIO ONGAKA 2ND RESPONDENT

LAND REGISTRAR, BUNGOMA COUNTY 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. This ruling is in respect of the Applicants' Notice of Motion application dated 6th April 2024. The said application is expressed to be brought under Section 3, 3A of the *Civil Procedure Act* and Order 42(6) (1) of the *Civil Procedure Rules* 2010 seeking the following Orders:
 - a. That, Sirisia Land Case No. E013 of 2023 (*Jacinta Anyango Walumbe & Beninah Matat Walumbe v Tuti Holdings Limited & 3 Others*) be and is hereby transferred to Bungoma Law Courts.
 - b. The Costs be in the cause.
2. The application is based on grounds on the face of the said application supported by the affidavit of Jacinta Anyango Walumbe sworn on the 8th April, 2024.
3. The deponent deposed that the Applicants herein are the Plaintiffs in Sirisia land case NO. E013 OF 2023 *Jacinta Anyango Walumbe & Beninah Matata Walumbe v Tuti Holdings Limited & 3 Others* And the Interested Parties in SRM Civil Suit No. 33 of 2018 *Tuti Holdings Limited v Erick Machio*



Ongaka & Jacinta Anyango Walumbe & Beninah Matata Walumbe. That the abovementioned cases were presided over by Hon. R. Langat, PM wherein decisions have been rendered. The Applicant in contradiction to the above deposed that Sirisia land case NO. E013 OF 2023 is pending hearing of the main suit.

4. The deponent further deposed that they are apprehensive that Hon. R. Langat who is the only Judicial Officer seized with jurisdiction to hear land matters may be prejudiced in determining the pending suit having determined the other suit. It was deposed that Land parcel No. W.Bukusu/S.Mateka/6417 & W.Bukusu/S.Mateka/6418 are situated in Mateka which is nearer to Bungoma Law Courts. It was further deposed that none of the parties reside in Sirisia and no party shall suffer undue prejudice if the orders sought are granted.
5. In opposition thereto, the 1st Respondent filed grounds of opposition dated 1st July, 2024 where he averred that the application lacks merit and sought to have the same dismissed.
6. The parties agreed to dispose of the said application by way of written submissions. The Applicants filed their submissions dated 19th July, 2024 and placed reliance in the case of *Waweru v Prime Auto Solutions Limited* (Misc Civil Application no. E053 OF 2023).
7. I have considered the application filed herein as well as the affidavit in support thereof. I have also considered the Grounds of Opposition filed by the Respondent and the written submissions by Counsel for the Applicant. The issue that emerges for determination is whether the application dated 6th April, 2024 is merited.
8. The Applicants through their supporting affidavit deposed that there are two cases involving the parties herein i.e. Sirisia SRM Civil Suit No. 33 of 2018 and Sirisia Land Case No. E013 OF 2023. It is imperative for me to note that contrary to what the Applicants herein swore in their supporting affidavit, they are not interested parties or parties at all in Sirisia SRM Civil Suit No. 33 of 2018 as their application to be enjoined as such was declined.
9. The Applicant further contend that Hon.R. Langat, PM, is the only Judicial Officer with jurisdiction to hear and determine land cases at Sirisia Law Courts and having presided over and rendered himself in Sirisia SRM Civil Suit No. 33 of 2018, they are apprehensive that they may be prejudiced if the same magistrate handles Sirisia Land Case no. E013 of 2023, which is still pending. The 1st Respondent in his Grounds of Opposition appears to suggest to this court that Hon. R.Langat did not participate in determining the main suit and was only involved in hearing the application seeking to set aside the judgment made by the then presiding magistrate. Notably, the Applicant has not attached the judgment of the trial court regarding Sirisia SRM Civil Suit No. 33 of 2018, and based on the ruling dated 5th July, 2023, it is unclear whether Hon. R. Langat determined the case. In my opinion, this evidence would have significantly strengthened the Applicant's case by giving the court an opportunity to interrogate the Applicants assertions in relation to the content of the said judgment.
10. At this juncture, I must emphasize that it is inappropriate conduct for advocates to withhold or selectively present information when making applications or responses. This practice burdens the court, compelling it to decipher the underlying meaning of pleadings and read between the lines. Further, this application is expressed under inter alia Order 42 Rule 6(1) which governs stay of execution in case of appeal while the prayers sought in this application are for transfer of a suit and thus, totally unrelated. For the sake of substantive justice, this court shall however proceed to determine the application on merit.



11. Section 18 of the *Civil Procedure Act* bestows upon the High Court the powers to transfer suits of a civil nature and provides as follows;

- (a) 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.
 - 1. 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”.

12. Section 1A (1) of the *Civil Procedure Act* provides that the overriding objective of the Act and the rules made thereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the *Act*. Section 1B(1) of the said Act provides as follows-

“For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-

- (a) the just determination of the proceedings;
- (b) the efficient disposal of the business of the Court;
- (c) the efficient use of the available judicial and administrative resources;
- (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
- (e) the use of suitable technology:”



13. In the case of *Kitbita Ngeana v Mwaniki Kisume* [2018] eKLR the Court stated;

“Circumstances that would move a court to grant the order sought were considered in the David Kabungu Case (Supra) where Okello J stated that;

“What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction... it is well established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are, 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... Want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court from which transfer is sought has no jurisdiction to try the case, transfer would be refused...”

14. As earlier mentioned, it appears from the pleadings that Hon. Langat did not participate in the determination of Sirisia SRM Civil Suit No. 33 of 2018 and even if he did, the prejudice apprehended by the Applicants is not reason enough for this court to exercise its jurisdiction as sought. The Applicants have failed to demonstrate that the subordinate court will not bring an impartial mind on the adjudication of the case that is a mind open to persuasion by the evidence and submission of counsel. It must be noted that all Courts have a duty to dispense justice without fear or favour and a duty to sit in any case.

15. The upshot of my finding is that the notice of motion dated 6th April, 2024 is devoid of merit and the same is hereby dismissed with costs to the Respondents.

16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 24TH DAY OF OCTOBER, 2024.

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HON.E.C CHERONO

JUDGE

In the presence of;

1. Wamalwa R H/B for Were for Applicant.
2. Mr. Juma Waswa H/B for Mr. Sichangi for 1st Respondent.
3. 2nd Respondent-absent.
4. 3^r & 4th Respondent/Advocate-absent.
5. Bett C/A

