



Kimingi (Suing as the administrator of the Estate of Jane Ngoiri Kioi alias Ngoiri Kioi (Deceased) v Githunguri Constituency Ranching Co Limited & 16 others; Tempo Co-operative Savings and Credit Society Limited (Interested Party) (Environment & Land Miscellaneous Case E043 of 2024) [2024] KEELC 13419 (KLR) (18 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13419 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND MISCELLANEOUS CASE E043 OF 2024**

JG KEMEI, J

NOVEMBER 18, 2024

BETWEEN

DAVID THUO KIMINGI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF JANE NGOIRI KIOI ALIAS NGOIRI KIOI (DECEASED) APPLICANT

AND

GITHUNGURI CONSTITUENCY RANCHING CO LIMITED 1ST RESPONDENT

THE LAND REGISTRAR, RUIRU 2ND RESPONDENT

THE REGISTRAR OF COMPANIES 3RD RESPONDENT

THE HON ATTORNEY GENERAL 4TH RESPONDENT

JOSEPH MIRUNGU KIOI 5TH RESPONDENT

REGINA NJOKI NJUE 6TH RESPONDENT

LYDIA WANJIRU 7TH RESPONDENT

MARY NYAMBURA MUNGAI 8TH RESPONDENT

PHOEBE WAMBUI NJOROGE 9TH RESPONDENT

ARNOLD NJOROGE 10TH RESPONDENT

JENEFFER NJERI MURAGURI 11TH RESPONDENT

MERCY WANJIKU NGACHA 12TH RESPONDENT

BERYL JULIE JUSA 13TH RESPONDENT

CATHERINE ORENJA AYIRO 14TH RESPONDENT



STELLA JEAN WANJA MUNYA 15TH RESPONDENT
RUTH NJOKI NYAGA 16TH RESPONDENT
AGNES GICUKU NJERI 17TH RESPONDENT

AND

TEMPO CO-OPERATIVE SAVINGS AND CREDIT SOCIETY
LIMITED INTERESTED PARTY

RULING

1. Before Court is the Applicant's Notice of Motion Application dated 3/7/2024 expressed under Sections 1A, 1B, 3A and 18 of the Civil Procedure Act seeking orders THAT;
 - a. Spent.
 - b. Spent.
 - c. This Honorable Court be pleased to order the transfer of Ruiru CMELC No. E016 of 2024; David Thuo Kimingi V Githunguri Constituency Ranching Company Ltd & Others to this Court for trial and final disposal.
 - d. The costs of this Application be provided for.
2. The Application is premised on the grounds that Ruiru CMELC No. E016 of 2024; David Thuo Kimingi Vs. Githunguri Constituency Ranching Company Ltd & Others (hereinafter the lower Court suit) is pending hearing and determination in the subordinate Court. That the subject matter therein is L.R No. Ruiru Kiu Block 2 (Githunguri)/2329 which was subdivided into ten portions namely; Ruiru Kiu Block 2 (Githunguri)/10346, 10347, 10348, 10349, 10350, 10351, 10352, 10353, 10354 and 10355. That the plaintiff therein seeks cancellation of the title deed which was fraudulently issued and reversion of the suit land to the estate of the deceased person, Jane Ngoiri Kio. That at the time of filing the lower Court suit, the subordinate Court had requisite jurisdiction but the Respondent's valuation reports reveal that the suit land exceeds Kshs. 20 Million which is beyond the pecuniary jurisdiction of the subordinate Court prompting this Application.
3. In his undated Supporting Affidavit, David Thuo Kimingi the Applicant rehashed the above grounds and annexed a copy of the Amended Plaint dated 15/3/2024 filed in the lower Court marked as 'DTK-1'. He urged the Court to exercise its powers under Section 18 of the Civil Procedure Act to transfer the lower Court file to this Court as prayed.
4. The Application is opposed. The 1st Respondent through the firm of Kanyi Kiruchi & Co. Advocates filed Grounds of Opposition dated 20/8/2024 on the following grounds;
 - a. That the said Application is devoid of any merit scandalous and an abuse of the Court process.
 - b. That this Court cannot transfer a nullity since the subject matter in Ruiru CMELC No. E016 of 2024 in relation to L.R No. Ruiru Kiu Block 2 (Githunguri)/2329 which has since both (sic) subdivided to 10 portions to wit Ruiru Blcok 2 (Githunguri) 10346 – 10355 exceeds the pecuniary jurisdiction of the Ruiru Court hence the suit is a non-starter void ab initio incapable of transfer.



- c. That the Application should be dismissed with costs.
5. In a rejoinder the Applicant filed a Further Affidavit dated 10/9/2024. He averred that as a result of the aforesaid subdivisions separate titles whose pecuniary value is well within the jurisdiction of the subordinate Court. The copies of each parcel green card are annexed as 'DTK-1'. That none of the Respondents' valuation reports (DTK-2) produced show that the plots independently exceed Kshs. 2.5 Million. That the suit is not a nullity as pleaded because at the time of filing the suit, the Court was well vested with jurisdiction to entertain it.
 6. The Application was argued orally before Court on 17/9/2024. The Applicant also filed a List of Authorities dated 10/9/2024 which I have considered.
 7. The sole issue for determination is whether the Application is merited.
 8. A glean of the Amended Plaintiff dated 15/3/2024 shows that the Applicant herein filed suit before the Chief Magistrate's Court in Ruiru Chief Magistrate's Court involving a dispute of a parcel of land No. Ruiru/Kiu Block 2 (Githunguri)2369 measuring approximately 1.25 acres (the suit land). That the suit land was allocated to the late Jane Ngoiri vide ballot No. 2328 and Share Certificate No. B-4508. The Applicant avers that the suit land was later subdivided into ten portions and upon valuation by the Respondents the monetary value of the parcels exceeded the Chief Magistrate's Court jurisdiction. The Applicant avowed that at the time of filing the suit, the Subordinate Court was well vested with jurisdiction to entertain the suit and urges the Court to allow the Application. The suit land value is currently over Kshs. 20 Million. Accordingly the Chief Magistrate's Court pecuniary jurisdiction limited to Kshs. 20 Million is ousted hence the Application.
 9. In rebuttal, the Respondents contended that the Application is unmerited as this Court cannot transfer a nullity because the suit was filed in a Court devoid of jurisdiction.
 10. Section 18 of the *Civil Procedure Act* bestows upon the High Court (read ELC) the powers to transfer suits of a civil nature. The said provisions of the law 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) 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.”

11. The power to transfer a suit is discretionary and therefore a party seeking to transfer a matter from one Court to another has the burden of providing sufficient reasons as to why the transfer is merited. However, a matter can only be transferred if the Court from which the Applicant is seeking to have the same transferred from, had jurisdiction over the said matter in the first instance.
12. Evidently the record before Court shows that the issue of pecuniary value of the suit land was introduced by the Respondents vide a valuation report annexed as DTK-2 dated 7/6/2024 by Oliva Ltd. The valuation is in respect of the ten-subdivisions of the suit land namely Ruiru Kiu Block 2 (Githunguri) 10346 – 10354. DTK-4 is a copy of the plaint filed in the subordinate Court dated 15/1/2024 which was exclusively for the suit land without the subdivisions as contained in the Amended Plaint dated 16/3/2024. Interalia in his plaint, the Applicant prayed for declaratory orders affirming his ownership of the suit land and the monetary value of the suit land was not an issue.
13. The Applicant further averred that he filed his suit in the Subordinate Court in good faith believing the Court was clothed with jurisdiction. Other than contending that the suit is a nullity, the Respondents have not demonstrated any prejudice they stand to suffer as a result of transferring the suit for hearing and determination by this Court. In light of the forgoing I find that the suit was properly filed initially before a Court of competent jurisdiction.
14. The powers of this Court are vested by Article 162(2)(b) of *the Constitution* of Kenya as read with Section 13 of the *Environment and Land Court Act* (ELCA). The exercise of this Court’s powers is guided by both *the Constitution* of Kenya and Statute and in particular Articles 48 and 159 of *the Constitution* of Kenya and Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*.
15. Faced with a similar issue at hand, the Court in the case of John Mwangi Karanja Vs. Alfred Ndiangui [2011] eKLR held that:-

“With the enactment of Sections 1A and 1B of the *Civil Procedure Act*, the time has perhaps now come for this matter of transfer of suits to be looked at afresh...It appears to me that transfer of suits from one Court to another is essentially a procedural issue that has been elevated to the status of jurisdiction. If a suit finds itself in the wrong Court, surely it is in the interests of justice and in the interests of all concerned that the suit be forwarded to the appropriate Court with jurisdiction so that the issues in dispute can be properly and finally adjudicated. What prejudice would a party suffer in that event? After all, the overriding objective of the *Civil Procedure Act* and Rules is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act (Section 1A (1). The Court itself is enjoined by subsection (2) of that section to seek to give effect to the said overriding objective in exercise of its powers under the Act or the interpretation of any of its provisions.”
16. In a bid to uphold the Overriding objectives of the Court under the *Civil Procedure Act*, the Respondents’ proposal to decline the Application would not in my view ensure ends of justice are met. I say so because as it is there is a case before the Chief Magistrate’s Court which according to the Applicant, he was advised to take appropriate steps to move it into this Court for determination. The Respondents have not controverted this averment. Requiring the Applicant to file afresh suit herein would no doubt attract Court fees on his part yet he already paid the same as at that time he filed his suit at Ruiru.



17. The upshot of the foregoing is that the Application dated 3/7/2024 is merited. It is allowed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 18TH DAY OF NOVEMBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Kipngetich HB Mwangi for the Applicant

1st – 17th Respondents - Absent

Court Assistant – Phyllis

