



Samuel v Kihara (Environment and Land Miscellaneous Application E023 of 2022) [2023] KEELC 617 (KLR) (30 January 2023) (Ruling)

Neutral citation: [2023] KEELC 617 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E023 OF 2022
LN GACHERU, J
JANUARY 30, 2023

BETWEEN

MWANGI SAMUEL PLAINTIFF

AND

SAMUEL MUGO KIHARA DEFENDANT

RULING

1. This court has considered the notice of motion application dated October 5, 2022, for transfer of Murang'a MCELC No 165 of 2010, from Murang'a Chief Magistrate's Court to Kigumo Law Courts.
2. The reasons for the transfer is that the suit property Loc 2/Mairi/276 and Loc 2/Mairi/686 fall under the jurisdiction of Kigumo SPM court, and thus reasons for the transfer. That at the time of filing the suit, Kigumo SPM court did not have jurisdiction to hear and determines land matters.
3. The application is opposed, by the defendant through the replying affidavit of J Mwangi Ben Advocate, who averred that the suit has been in court for over 12 years and that no good reasons have been given for filing this application after 12 years.
4. The court has considered the application, the replying affidavit and the further affidavit and finds that;-
5. The main reasons for seeking transfer is because the magistrate in Kigumo court now has jurisdiction to hear land matters. The *Magistrate's Courts Act* was amended in 2015. The suit MCELC 165 of 2010 that is sought to be transferred was filed in 2010. It has been in the court system for over 12 years.
6. Section 1A of the *Civil Procedure Act*, provides for the overriding objective of the Act which is to facilitate just, expeditious and proportionate resolution of the disputes under the said Act.
7. The courts are encouraged to facilitate expeditious disposal of matters before the judicial system.



8. Section 3A of the said *Civil Procedure Act* gives the court inherent power to make such orders as may be necessary for ends of justice and prevent abuse of the court process.
9. Seeking to transfer a matter from one court to another given that the said matter was filed in 2010, is an abuse of the court process. The court finds that the necessary orders herein that would promote the achievement of the overriding objective of the Act as provided by sections 1A & 1B of *Civil Procedure Act* is to decline the instant application.
10. Let the applicant prosecute the matter – MCELC No 165 of 2010 before the Murang’a chief magistrate court expeditiously. There are enough magistrates with relevant pecuniary jurisdiction to hear and determine this matters at Murang’a Chief Magistrate’s Court. The objective of judiciary at this time is to have all old matter prosecuted and determined expeditiously and not to transfer them from one court to another. The application dated October 5, 2022, is dismissed with costs to the respondent.
11. The suit Murang’a MCELC No 165 of 2010 Mwangi Samuel v Samuel Mugo Kihara to proceed expeditiously before Murang’a Chief Magistrate’s Court.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG’A THIS 30TH DAY OF JANUARY, 2023.

L GACHERU

JUDGE

In the presence of;

M/s Wainaina for the Applicant

Mr Mwangi Ben for the Respondent

Joel Njonjo - Court Assistant

L GACHERU

JUDGE

January 30, 2023

