



**Mugo & 2 others v Nguri & 5 others (Miscellaneous Application  
E016 of 2022) [2023] KEELC 15872 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15872 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
MISCELLANEOUS APPLICATION E016 OF 2022**

**JG KEMEI, J**

**FEBRUARY 23, 2023**

**BETWEEN**

**JOHN KIANIA MUGO ..... 1<sup>ST</sup> APPLICANT  
ESTHER NJERI (AS ADMINISTRATOR OF THE ESTATE OF NELSON  
NGANGA WANJAU) ..... 2<sup>ND</sup> APPLICANT  
JOSEPHAT MBUGUA NJENGA (AS THE ADMINISTRATOR OF THE ESTATE  
OF FRANCIS NJENGA MUGO) ..... 3<sup>RD</sup> APPLICANT**

**AND**

**REUBEN MWANGI NGURI ..... 1<sup>ST</sup> RESPONDENT  
NDUNGU NGURI NDIKARUMWO ..... 2<sup>ND</sup> RESPONDENT  
JAMES NDIBA MACHARIA ..... 3<sup>RD</sup> RESPONDENT  
ALLEN PETER KIGIRA AS THE ADMINISTRATOR OF THE ESTATE OF  
PETER MBURU KIGIRA ..... 4<sup>TH</sup> RESPONDENT  
DISTRICT LAND REGISTRAR, KIAMBU ..... 5<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. On the 16/3/2022 the Applicants filed this motion seeking among other orders that the SPMELC No 10 of 2018 be withdrawn and transferred to this Court for trial and disposal. That the case had initially been filed in this Court but was transferred *suo moto* by the Court to the Senior Principal Magistrate's Court for trial and disposal. That on Preliminary Objection raised by the Defendants the Senior Principal Magistrate's Court was in agreement that this is a matter that should be tried in this



Court. And in lieu of dismissing the matter the Senior Principal Magistrate's Court allowed the parties to approach this Court for orders to transfer the file to this Court.

2. The application is supported by the affidavit of the 1<sup>st</sup> Applicant who has reiterated the grounds already captured above.
3. I have also read and appreciated the annexed ruling by the Hon SPM Court on the matter.
4. The application is opposed through the grounds of opposition filed by the 1<sup>st</sup>-4<sup>th</sup> Respondents on the 9/5/2022 as follows;
  - a. The application lacks merit as the ruling in the SPM Court Githunguri ruled that the matter was instituted in a Court without jurisdiction.
  - b. That the suit instituted at the SPM Court was null and void hence the Applicants cannot seek to transfer a suit that is null and void.
  - c. The suit was defective in substance and in form having offended the rules on *res judicata* and the doctrine of laches.
5. The Respondents urged the Court to dismiss the application.
6. The 5<sup>th</sup> and 6<sup>th</sup> Respondents are in support of the application.
7. On the 6/6/2022 directions were taken and parties elected to file written submissions. As at the time of writing the ruling, only the Applicants had complied.
8. The Applicants submitted that this suit having been filed initially in the Environment and Land Court should be transferred back as the same was transferred to the Senior Principal Magistrate's Court *suo moto* by the Court in 2018.
9. I have read and considered the application and the key issue for determination is whether the application has merit.
10. Section 11 of the [Civil Procedure Act](#) stipulates where suits should be filed. It states as follows;

“Every suit shall be instituted in the Court of the lowest grade competent to try it, except that where there are more subordinate Courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate Courts:

Provided that—

- (i) if a suit is instituted in a Court other than a Court of the lowest grade competent to try it, the magistrate holding such Court shall return the plaint for presentation in the Court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his Court; and
- (ii) nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate Court in the same district.



11. Section 18 of the *Civil Procedure Act* empowers the Court to transfer suits 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.”

12. The power to transfer a suit is within the discretion of the Court which discretion must be exercised and applied judiciously. In exercising discretion the circumstances of each case must be looked into and the Court must satisfy itself.

13. I have seen the valuation report dated the November 21, 2012 with respect to the suit land whose acreage is 10.36 acres in Githunguri Sub County of Kiambu. The valuation is given as Kshs 20.3 Million which in my considered view falls within the jurisdiction of this Court. The Court has factored in the fact that the suit had initially been filed in this Court before it was transferred to the Senior Principal Magistrate’s Court.

14. I decline to discuss the issues of *res judicata* and laches and I leave it to the 1<sup>st</sup> -4<sup>th</sup> Respondents to exercise their liberties to raise it once the file has been placed before this Court.

15. For the above reasons I allow the application and make no orders as to costs.

16. Final orders and disposal

- a. SPMELC No 10 of 2018 be and is hereby transferred to this Court for hearing and determination.
- b. No orders as to costs.

17. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT THIKA THIS 23<sup>RD</sup> DAY OF FEBRUARY, 2023 VIA MICROSOFT TEAMS.**

**J G KEMEI**



## **JUDGE**

Delivered online in the presence of;

Njau for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants

Ms. Muibu HB Kamuru for 1<sup>st</sup> – 6<sup>th</sup> Respondents

Court Assistants – Esther / Kevin

