



**Ongoki v Kibet (Miscellaneous Civil Application 221 of 2023)
[2024] KEHC 4087 (KLR) (26 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4087 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION 221 OF 2023
JRA WANANDA, J
APRIL 26, 2024**

BETWEEN

FRANCIS TARAMUSI ONGOKI APPLICANT

AND

ALEX KIPROP KIBET RESPONDENT

RULING

1. The Application before this Court is the Notice of Motion dated 27/09/2023 filed by the Applicant through Messrs C.D. Nyamweya & Co. Advocates. The same seeks the following orders:
 - i. [spent]
 - ii. That this Honourable Court be pleased to order that the *CMCC No. E691 of 2022* be transferred to Eldoret Small Claims Court for hearing and determination.
 - iii. That the same orders to apply to *CMCC No. 690 of 2022*.
 - iv. Costs be provided for.
2. The Application is expressed to be brought under Order 51 Rule 1 of the [Civil Procedure Rules](#), Sections 1A, 3, 3A, 17 and 18 of the [Civil Procedure Act](#) and “all other enabling provisions of the law”. The grounds of the Application are as set out on the face thereof and it is supported by the Affidavit sworn by the Applicant’s Counsel, Charles Duke Nyamweya.
3. In his Affidavit, Advocate Nyamweya deponed that the said Eldoret *CMCC No. E691 of 2022* was filed on 26/08/2022, that at the time of filing the suit, the Small Claims Court had not been introduced in Eldoret, that the amount claimed is Kshs 637,000/- which is within the jurisdiction of the Small Claims Court, and that the expeditious timelines of the Small Claims Court shall ensure that the matter is concluded in a timely manner



Replying Affidavit

4. In opposing the Application, the Respondent, through Messrs J.L. Emmanuel Kipkurui & Co. Advocates, relied on the Replying Affidavit filed on 14/11/2023 and sworn by Emmanuel Kipkurui, Counsel for the Respondent. He deponed that the Application is frivolous, vexatious and a gross abuse of the Court process, that the said case was instituted in the year 2022, that on 10/12/2021, the Chief Justice *vide* Gazette Notice No. 13398 had already established the Eldoret Small Claims Court, hence by the year 2022 when the Applicant instituted the suit, the Small Claims Court at Eldoret was already operational and functioning, that the Applicant had the option of choosing to file the matter before the Chief Magistrates Court or the Small Claims Court and opted for the former, that it is evident that the Applicant is merely forum shopping, that this Court lacks the jurisdiction to grant the prayers sought and that should the Application be allowed, the Respondent stands to be greatly prejudiced as he will have been unwillingly subjected to abuse of the Court process.

Hearing of the Application

5. It was agreed and I directed that the Application be canvassed by way of written Submissions. The Applicant was to begin. However, up to the time of concluding this Ruling, I had not come across any Submissions filed by or on behalf of the Applicant. I presume that none was filed since for the Respondent too, I have not come across any Submission

Analysis & Determination

6. Upon considering the pleadings and the matters presented, I find the one issue that arises for determination to be “whether this Court should transfer the Eldoret Chief Magistrate’s Court Civil Case No. E 690 and E691 of 2022 to the Small Claims Court”.
7. The first matter I notice is that the Applicant has not annexed copies of any pleadings filed in the two alleged suits at the Chief Magistrate’s Court, the subject of this Application. Not even the Plaints have been exhibited. As a result, there is no material laid before this Court to enable it verify any of the matters alleged. The Court cannot even establish whether the two suits even exist. There is also no material before the Court to establish the nature of the disputes or understand or appreciate the nature of responses filed thereto or even verify the date when the suits were filed. The Court is therefore left to speculate.
8. In the absence of the said relevant and necessary exhibits, the Court cannot make an informed or reasoned determination. The Court cannot make decisions in a vacuum.
9. In any case, as the presiding Court over this region, this Court is aware that the Small Claims Court at Eldoret was gazetted in December 2021 and it then begun its operations in February 2022. It is therefore not correct, as alleged by the Applicant, that in August 2022 when he filed the suit at the Chief Magistrates Court, the Small Claims had not yet been established at Eldoret. I therefore agree with the Respondent that at the time of filing the suit, the Applicant had the option of choosing to file the suits either before the Chief Magistrate’s Court or the Small Claims Court and, in his own wisdom, opted to file the suit at the Chief Magistrate’s Court. Since the reasons given in the Application for seeking the transfer do not at all tally with the correct scenario, the Application cannot be granted.
10. The upshot of my findings above is that the Applicant’s Notice of Motion dated 27/09/2023 is dismissed with costs to the Respondent.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 26TH DAY OF APRIL 2024



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WANANDA J.R. ANURO

JUDGE

