



REPUBLIC OF KENYA



Mungai & 2 others v Kunyanyi & 4 others (Environment and Land Miscellaneous Application E001 of 2023) [2023] KEELC 16718 (KLR) (29 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16718 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2023
LN GACHERU, J
MARCH 29, 2023**

BETWEEN

**PETER KARIUKI MUNGAI 1ST PLAINTIFF
KENNETH GITHINJI GITURA 2ND PLAINTIFF
HUDSON KAMAU WANGUI 3RD PLAINTIFF**

AND

**ANDIKA KUNYANYI 1ST DEFENDANT
MAUNDU ANDIKA 2ND DEFENDANT
ESTHER WAMBUI KAMAU 3RD DEFENDANT
SHELINA NYAMBURA 4TH DEFENDANT
METHI & SWAN FARMERS CO-OPERATIVE SOCIETY LTD 5TH DEFENDANT**

RULING

1. By a Notice of Motion dated 19th January 2023 the 2nd Defendant/Applicant has sought for the following orders:
 1. Spent;
 2. That pending the hearing and determination of this application inter partes this honourable Court be pleased to stay the proceedings in Civil Suit No. 333 of 2016, currently pending before the Honourable E.M. Nyaga, Principal Magistrate, at the Chief Magistrate's Court at Murang'a;
 3. That Civil Suit No. 333 of 2016, currently pending in the Chief Magistrate's Court at Murang'a be and is hereby transferred from the Chief Magistrate's Court at Murang'a to



the Environment and Land Court at Murang'a for hearing and determination for lack of jurisdiction;

4. That costs of the application be in the cause.
2. The Application was premised on the grounds stated thereon and the Supporting Affidavit of the Applicant, Maundu Andika, sworn on 19th January 2023. The Applicant averred that the Plaintiffs filed Civil Suit ELC No. 333 of 2016, in the Chief Magistrate's Court at Murang'a on 10th October 2016, seeking for the transfer of land parcel No. Mitubiri/Wempa/Block/95 from the 2nd Defendant/Applicant to the Plaintiffs.
3. The Applicant averred that following a change of advocates to the Law Firm of Tim Kariuki & co. Advocates, he was advised to conduct a Valuation of the suit property and upon Valuation, the land was valued at Kshs.21,000,000/= which is beyond the pecuniary jurisdiction of the Chief Magistrate's Court at Murang'a. That the said advocates then advised the Applicant to have the suit transferred to the Environment and Land Court at Murang'a to be heard and determined, and hence the purpose of this application.
4. The 1st Plaintiff/Respondent with the authority of his Co-Respondents opposed the application through a Replying Affidavit dated 14th February 2023. He averred that the application is bad in law and an abuse of the Court process having been filed after inordinate delay. That the suit in the lower court was filed in 2016, while the present application was filed 7 years down the line, and that the suit has progressed significantly to the extent that witnesses have testified before the Principal Magistrate. Further, that the Valuation was done without the sanction of the Court, or with the involvement of the parties herein. The 1st Plaintiff/Respondent averred that the Applicant's mischief is blatant and prays that the application be dismissed.
5. The instant application was canvassed by way of written submissions.
6. The Applicant through the Law Firm of Tim Kariuki & Co. Advocates, filed his written submissions in support of the Application on 3rd March 2023.
7. The Applicant's main issue for determination is whether the Chief Magistrate's Court has jurisdiction to hear and determine Civil Suit No 333 of 2016.
8. On this issue, the 2nd Defendant/Applicant relied on Section 7(1) of the Magistrate's Act, which provides for the Civil jurisdiction of a Magistrate's Court. It states:

“A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed —

 - (a) twenty million shillings, where the court is presided over by a Chief Magistrate.”
9. The Applicant further submitted that the value of the suit property being Kshs. 21,000,000/= as demonstrated in the annexed Valuation Report, and that it is beyond the pecuniary jurisdiction of the Principal Magistrate. The Applicant relied on the case of Owners of Motor Vessel “Lillians” Vs. Caltex Oil (K) Ltd (1989) in which it was held:

“Jurisdiction is everything. Without it a Court has no power to make one more step. Where a court has no jurisdiction there should be no basis for a continuation of proceedings pending



other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

10. No submissions were filed by the Respondents who relied on their pleadings.
11. The Court has carefully read and considered the instant application, the Affidavits in support and in opposition and the written submissions and finds that the issue for determination is whether the Applicant is entitled to the orders sought?
12. This is an application for the transfer of Civil suit No. 333 of 2016, from the Chief Magistrate’s Court in Murang’a to the Environment and Land Court in Murang’a, on the grounds that the value of the suit property exceeds the pecuniary jurisdiction of the Chief Magistrate’s Court.
13. The 2nd Defendant/Applicant grounded his application on a Valuation Report undertaken by Index Africa Ltd which indicated that the value of the suit property exceeded the pecuniary jurisdiction of the Chief Magistrates’ Court.
14. The Respondents through the 1st Plaintiff/Respondent opposed the application on the grounds that the application was brought 7 years after the suit was filed, and that the Valuation was undertaken without the Court’s direction, sanction, or the knowledge of the parties herein, and that the suit had significantly progressed.
15. The provision for the transfer of suits from the Magistrates’ Court to the Environment and Land Court is provided for under Section 18(b)(ii) of the *Civil Procedure Act*. It states:

- “(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) ...
 - (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.”

16. In the case of *Kithita Ngeana vs. Mwaniki Kisuma* [2018] eKLR, the Court had the following to say on the circumstances under which the order to transfer suits may be granted-

“Section 18(1) of the *Civil Procedure Act* gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. The burden lies on the Applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice or the suit has been filed in a particular court for the purposes of working injustice. What the court has to consider is whether the Applicant has made a case



to justify it in closing doors of the court on which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction It is a 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 expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication 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 could be refused....."

17. It is not in doubt that the Suit No 333 of 2016, was filed in the Murang'a Chief Magistrate's Court, in the year 2016, which is 7 years ago. The 1st Plaintiff/Respondent deponed that the suit has significantly proceeded and admitted that they had testified in the matter.
18. It is the Applicant's contention that the current value of the suit property exceeds the pecuniary jurisdiction of the Chief Magistrate's Court. The Applicant states that the transfer of the suit is warranted on the grounds that following a Valuation Report that they themselves instructed, they discovered that the value of the suit property was Kshs.21,000,000/= which is beyond the pecuniary jurisdiction of the Magistrate's Court as set under Section 7(1) of the *Magistrate's Act* which states as follows:
 - " 7. Civil jurisdiction of a magistrate's court
 - (1) A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed —
 - (a) twenty million shillings, where the court is presided over by a Chief Magistrate."
19. So that in essence, the Applicant is seeking for the transfer of the suit herein based on the fact that the subordinate Court does not have the Jurisdiction to deal with the matter.
20. Jurisdiction is everything and without jurisdiction the Court has no option but to down its tools. It is not in doubt that though the powers to order transfer by the High Court which has an equal status to the Environment and Land Court, are discretionary, however, a matter can only be transferred if the Court from which the Applicant is seeking to have the matter transferred from had jurisdiction over the said matter, and the Applicant has satisfied the Court that the transfer is necessary.
21. Considering that this is a land matter, and the value of land is constantly appreciating or depreciating due to a variety of factors including development, access to amenities, and security, this court finds that the suit was filed in the correct court seven years ago when the value of the suit property was below Kshs.20,000,000/=. The suit then proceeded as developments were carried out on the suit property. As the developments on the property continued, the value of the suit correspondingly increased. At the same time the suit in the Magistrates court was proceeding with several witnesses called to testify.
22. The present application for the transfer of the suit property was warranted following a change of advocates by the Applicant. The Applicant's new advocates then advised the Applicant to conduct a valuation on the suit property at the late stage in the suit. Furthermore, the valuation conducted on



the suit property was not sanctioned by the court, and was not disclosed to the parties to the suit. To that extent the Court cannot rely on the valuation report.

23. In the case of *Rapid Kate Services Limited vs. Freight Forwarders Kenya Limited & 2 Others* [2005] 1 KLR 292, the court expressed itself as follows:

“The Court’s power to transfer proceedings from one Court to another is a useful corrective measure to ensure that proceedings wherever began or whatever forum the plaintiff has initially chosen should be dealt with or heard or determined by the Court most appropriate or suitable for those proceedings. When making or refusing an order for transfer the Court will have regard to the nature and character of the proceedings the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice. It is a discretionary power of the Court under section 3A of the *Civil Procedure Act...*”

24. Considering the above, a suit can only be transferred if it was initially filed in a court with competent jurisdiction to hear and determine the matter as was held in the case of *Abraham Mwangi Wamigwi vs Simon Mbiriri Wanjiku & another* [2012] eKLR as follows:-

“The law relating to transfer of suits from Subordinate courts to the High Court or any transfer for that matter is very clear. In *Kagenyi Vs. Musiramo* (Supra), Sir Udo Udoma CJ made it clear that an order for transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it”

25. As was held in the *Kithita Ngeana* case there are factors to be taken into consideration prior to transfer of the suit; these are balance of convenience, questions of expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer. The matter has significantly proceeded in the Chief Magistrate’s Court, and witnesses have testified. This court finds that a transfer to the suit would not be in the interest of justice and would be an inconvenience to all parties.

26. Furthermore, the Valuation of the suit property was not sanctioned by the Court and neither were the other parties to the suit involved. In the interest of justice, the Valuation Report was not properly placed before the court to consider and it would be right to hold that it was done with the input of the Applicant only and this only serves his interests and not the other parties’ interests.

27. The upshot of the foregoing is that the court is not satisfied that the 2nd Defendant/Applicant has made out a case to warrant the transfer of the suit pending before the subordinate court to this court. Consequently, the Applicant’s Notice of Motion Application dated 19th January 2023, is found not merited and the said application is hereby dismissed entirely with costs to the Plaintiffs/Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG’A THIS 29TH MARCH 2023.

L. GACHERU

JUDGE

Delivered virtually in the presence of:

Joel Njonjo/Mwenda - Court Assistants

Plaintiffs/Respondents – Absent



1st Defendant – Absent

Tim Kariuki for the 2nd Defendant/Applicant

3rd to 5th Defendants - Absent

