



**Oddiaga v Kilonzo (Cause 148 of 2022)
[2023] KEELC 20261 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20261 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CAUSE 148 OF 2022
LL NAIKUNI, J
SEPTEMBER 27, 2023**

BETWEEN

STEPHEN ODDIAGA PLAINTIFF

AND

KIOKO SUNZA KILONZO DEFENDANT

RULING

I. Introduction

1. The Plaintiff/Applicant herein, Stephen Oddiaga moved this Honorable Court for the hearing and determination of their Notice of Motion application dated 15th March, 2023. It was brought against the Defendant, Kioko Sunza Kilonzo herein under a Certificate of urgency and the dint of the provisions of Sections 1A, 1B, 3A and 12 of the *Civil Procedure Act*, cap. 21.
2. Upon service, while opposing the said application the Defendant/Respondent herein only did file a Replying affidavit dated 26th June, 2023 accordingly.

II. The Plaintiff/ Applicant's case

3. The Plaintiff sought for the following orders:-
 - a. That ELC No.015 OF 2021- Kioko Sunza Kilonzo v stephen Oddiaga filed at Taveta Principal Magistrate Court be transferred to the Mombasa Environment and Land Court (ELC) for trial and disposal.
 - b. That upon transfer of ELC No.015 OF 2021-Kioko Sunza Kilonzo v stephen Oddiaga be consolidated with this instant suit and the be heard and determined together.
 - c. That the cost of this application be in the cause.



4. The application by the Plaintiff/Applicant herein was premised on the grounds, testimonial facts and averments made out under the 14 Paragraphed Supporting Affidavit of Stephen Oddiaga sworn and dated 15th March, 2023 with one (1) annexure marked “SO – 1”. The Plaintiff/Applicant averred that:
- a. The ELC No. 015 OF 2021-Kioko Sunza Kilonzo v stephen Oddiaga was instituted in Principal Magistrates Court at Taveta vide a Plaint dated 13th September, 2021. Annexed and marked “SO-01”- a copy of the Plaint.
 - b. The matter before the subordinate court in Taveta is between the same parties and found on neighboring land.
 - c. The Deponent holds that the Applicant believes that the transfer and consolidation of these suits will save on the courts time and avoid multiplicity of suits.
 - d. The Plaintiff/Applicant filed this matter before this court as he believes that the monetary value of the suit property surpasses the jurisdiction of a subordinate court and it is only fair that ELC No.015 OF 2021- Kioko Sunza Kilonzo v stephen Oddiaga is transferred to this court.
 - e. The Respondent has filed his Defence and Counter - Claim in this suit conceding that in fact this court has jurisdiction to determine this suit as he seeks for a number of orders against the Plaintiff/Applicant herein.
 - f. It was only proper for one court to hear and determine the two suits to finality to avoid the issue of contradictory orders being issued by the two different courts.
 - g. It was in the interest of justice that both matters be heard and determined by this Honourable court.
 - h. The Defendant/Respondent herein would not suffer any prejudice if the matter was transferred to the Environment and Land Court as it is the case filed in Taveta has not even commenced trial.
 - i. It was in the interest of justice that the application be allowed and the suit be transferred to Mombasa Environment and Land Court for quick and effective hearing and determination of the suit.
 - j. It was in the interest of justice that this application be granted.

III. The response by the Defendant/Respondent

5. The Defendant/Respondent filed a 26 Paragraphed Replying Affidavit sworn by Kioko Sunza Kilonzo, the Defendant herein and dated on 6th June, 2023 in opposition of the application together with three (3) annexures marked as “KSK 1 to 3” annexed thereof. He stated as follows: -
- a. He is the legal and registered owner of land parcel known as Kimorigo/Kimorigo/278 measuring approximately 1.25Ha situated at Eldoro village within Taveta Sub-count. (Annexed and marked as “KSK – 1” is a copy of a title to that effect).
 - b. Vide a Plaint dated 13th September 2021, he instituted a land case before the Principal Magistrate’s court Taveta against the Plaintiff/Applicant seeking the following reliefs or orders:-



- i. A permanent injunction on land title Kimorigo/Kimorigo/278 measuring approximately (1.25Ha) situated at Eldoro village within Taveta Sub-county against the Plaintiff/Applicant.
 - ii. An order be issued for demolishing an erected perimeter wall in parcel of land title Kimorigo/Kimorigo/278 measuring approximately (1.25Ha) situated at Eldoro village within Taveta Sub-county.
 - iii. Cost and interest of this suit.
 - iv. Any other or further relief tis Honourable court might deem fit and just to grant. (Annexed and marked as “KSK – 2” is a copy of the Plaint to that effect).
- c. The monetary value of the suit property which he sued the Plaintiff/Applicant herein is below a sum of Kenya Shillings Ten Million (Kshs. 10,000,000/-).
 - d. The Plaintiff/Applicant herein filed a preliminary objection on the pecuniary jurisdiction of the Magistrate’s court, which application was dismissed by the Taveta court (Annexed and marked as “KSK – 3” is a copy of the preliminary objection.)
 - e. The Plaintiff/ Applicant was the beneficially of land parcel known as Kimorigo/Kimorigo/278 which borders the Defendant/ Respondent’s land parcel Kimorigo/Kimorigo/278.
 - f. The Plaintiff/ Applicant has been filing several application in the Taveta case with an aim of only delaying the hearing and determination of the said case.
 - g. He disputed the monetary value alluded to by the Plaintiff/Applicant.
 - h. He admitted that the parties in the Magistrate’s court were the same but the subject matter was different as his land parcel is Kimorigo/ Kimorigo/ 278 which is below a sum of Kenya Shillings Ten Million (Kshs. 10,000,000.00/=) while the Plaintiff/Applicant’s land parcel is Kimorigo/ Kimorigo/ 285 whose monetary value has been forced to a sum of Kenya Shillings Twenty Two Million (Kshs. 22,000,000/-).
 - i. Filing the Defence and Counter - Claim never meant that he had conceded to this Honourable Court.
 - j. Further the subject matter in both the courts were situated in Taveta and both of us are residents of Taveta.
 - k. Transferring the Taveta case to this Honourable Court would be expensive to him together with his witnesses.
 - l. The Plaintiff/Applicant had not given sufficient grounds to warrant the issuance of the orders.
 - m. The Replying Affidavit in total opposition of the Plaintiff/ Applicant’s Notice of Motion application dated 15th March 2023.

IV. Submissions

- 6. On 11th July, 2023 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 15th March, 2023 be disposed of by way of written submissions and all the parties complied. Pursuant to that all the parties obliged and on 18th July, 2023 a ruling date was reserved on Notice by Court accordingly.



A. The Written Submissions by the Plaintiff/Applicant

7. On 14th July, 2023, the Learned Counsel for the Plaintiff/Applicant through the Law firm of Messrs. Mkan & Co Advocates filed their submissions dated 14th July, 2023. Mr. Mkan Advocate commenced his submission in respect of the Plaintiff's Application dated 15th March, 2023 seeking following orders:-
 - i. That ELC No. 015 OF 2021-kioko Sunza Kilonzo v stephen Oddiaga filed at Taveta Principal Magistrate Court be transferred to Mombasa Environment and Land Court (ELC) for trial and disposal.
 - ii. That upon transfer of ELC No.015 OF 2021-Kioko Sunza v stephen Oddiaga be consolidated with this instant suit and be heard and determined together.
 - iii. That costs of this application be in the cause.
8. The Learned Counsel observed that in opposition to the application, the Respondent filed Replying Affidavit together with submissions both dated 6th June 2023. The Plaintiff sought orders for the transfer of ELC No.015 of 2021 filed at Taveta Principal Magistrate's Court to this court, and upon transfer the same be consolidated with this instant suit for the two to be heard and determined together. The Learned Counsel submitted that Taveta ELC No. E015 OF 2021, where the Plaintiff in the suit is the owner of Kimorigo/Kimorigo/278, which parcel of land borders the Defendant's Kimorigo/Kimorigo/285. The Plaintiff filed the suit alleging the Defendant trespassed into his land and was interfering with the boundaries by erecting a perimeter wall that extends to curve in a portion of Plaintiff's parcel of land. As a result the Plaintiff was seeking orders inter alia permanent injunction and demolishing of the erected perimeter wall. The Defendant opposed the allegations and maintained that the wall is on parcel No. Kimorigo/ Kimorigo/ 285.
9. The Learned Counsel intimated that Mombasa ELC No. 148 OF 2022, the Plaintiff in this suit was the duly appointed Legal Administrator of the Estate of the late Francis Oddiaga a.k.a. Otiaka Asienga who is the registered owner of Plot No. Kimorigo/Kimorigo/285. The Plaintiff's case is that the Defendant relative's grave sites are extending the boundaries of the two plots into the Plaintiff's suit land. That the said encroached portion was what the Defendant erroneously claims to be part of his Plot No. 278. The Plaintiff was seeking orders inter alia removal of the graves from Plot No.285 and vacant possession. The Defendant opposed the suit and filed a Counter - Claim in which he sought the exact same orders as those in the Taveta suit.
10. The Learned Counsel submitted that looking at the facts of the two cases and the orders sought by the parties in their respective cases, it was clear that the issue in dispute was counter allegation of trespass and encroachment. The parties were accusing each other of trespass into their respective suit parcels of land. It was for that reason that the Plaintiff in Mombasa ELC No. 148 of 2022 has filed this instant application that this before the court to have the two-suit consolidated and determined in one avenue. The monetary value of the Applicant's suit property exceeds the jurisdiction of the Taveta Principal Magistrate Court. The value of Kimorigo/Kimorigo/285 together with the development thereon is a sum of Kenya Shillings Twenty Two Million (Kshs. 22,000,000/=) as per the Valuation Report filed before this court dated 8th December 2022. Because of the monetary value, the Plaintiff could not lodge his Counter claim at the Taveta Court, as this court was the one vested with jurisdiction for such a claim. As the Defendant states in his written submissions, the Plaintiff herein raised the issue of monetary jurisdiction with respect of Plot No. 285 at the Taveta Principal Magistrates Court. However the same was dismissed purely for the reason that a valuation Report had not been filed.



11. The Learned Counsel argued that it was only proper and fair that the two suits are consolidated, heard and determined together to avoid an instance where two conflicting orders are issued by the two distinct courts. The Learned Counsel relied on the following cases. In the case of:- "[Law Society of Kenya v Centre for Human Rights and Democracy and 12 Others](#) SCK Petition No. 14 of 2013(2014) eKLR" the Supreme Court held that:-

"The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it...In addition, the court must be satisfied that no injustice would be occasioned to the Respondents if consolidation is ordered as prayed."

12. In the case of "[Stumberg and another v Potgieter](#) (1970) EA 323" where the court held:

"Where there are common questions of law or fact in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered".

13. Further in the case of: "[Idow Trading Company Limited v Mohamud Jimale & 2 others](#) [2021] eKLR", the Court held that:-

1. "[Transcend Media Group v The Standard Group Limited](#) [2021] KLR" which cited "[Korean United Church of Kenya & 3 others v Seng Ha Sang](#)[2014] eKLR" where the court held that:

"Consolidation of suits is done for the purposes of achieving the overriding objective of the *Civil Procedure Act* that is, for expeditious and proportionate disposal of civil disputes. The main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action."

2. "[Nyati Security Guards & Services Ltd vs Municipal Council of Mombasa](#) (2004) eKLR" was cited where it was held:

"There are however situations where consolidation is undesirable like where in two action a plaintiff in one is a defendant in the other unless the claim in one is to be treated as a counterclaim in the other."

14. The Learned Counsel submitted that in view of the above cited authorities, and in particular the case of Nyati Security, that the Applicant could not lodge his counter-claim at the Taveta Principal Court because the court lacks monetary jurisdiction.

15. The Learned Counsel urged the Court to take into consideration the provision of Order 11 Rule 3(1) (h) of the [Civil Procedure Rules](#) that provides as follows:-

"3.

(1) With a view to furthering expeditious disposal of cases and case management the court shall.....

(h) consider consolidation of suits."



16. In conclusion, the Learned Counsel submitted that in the best interest of justice that the application dated 15th March 2023 ought to be allowed as prayed. No prejudice whatsoever will be occasioned to the Defendant/Respondent if the orders sought are granted.

B. The Written Submission of the Defendant/Respondent

17. The Defendant/Respondent through the Law firm of Messrs. Ragita Gideon & Company Advocates filed their written submissions dated 6th June, 2023. The Learned Counsel commenced by informing Court that vide a notice of motion application dated the 15th March 2023, the plaintiff/applicant sought the following orders:-
- a. That ELC No.015 of 2021-Kioko Sunza Kilonzo v stephen Oddiaga filed at Taveta Principal Magistrate's court be transferred to Mombasa Environment and Land Court (ELC) for trial and disposal.
 - b. That upon transfer of ELC No. 015 of 2021-Kioko Sunza Kilonzo v stephen Oddiaga consolidated with this instant suit and the same be heard and determined together.
 - c. That Costs of this application be provided be in the cause.
18. The Learned Counsel submitted that the Defendant/Respondent has filed a replying affidavit strongly opposing the orders sought by the Plaintiff/Applicant on the ground that the Taveta Principal Magistrate's court has pecuniary jurisdiction to hear and determine the Defendant/Respondent's case as the monetary value of his suit property was below a sum of Kenya Shillings Ten Million (Kshs. 10,000,000.00/=).
19. The Learned Counsel argued that the subject matter of the Defendant/Respondent was land parcel Kimorigo/Kimorigo/278 which is situated in Taveta as to his witness who could not afford travelling to Mombasa in the event the Taveta case is transferred to Mombasa. Further, the Plaintiff/Applicant herein filed a notice of preliminary objection in respect of the pecuniary jurisdiction of the Principal Magistrate's court in Taveta, which preliminary objection was dismissed and he never appealed the dismissal.
20. The Learned Counsel submitted that the power of the High Court to transfer suit from one subordinate court met by such provision of Section 18 of the *Civil Procedure Act*, Cap. 21. To this end, the provision of Section 18 was to be read in conjunction with the provisions of Sections 11, 12 & 15 of the Act. The basis upon which the power to transfer was excisable by the High Court is stated in the case of "*David Kabungu v Zika Munga & 4 Others* HCCC No. 36 of 1996 (in Kampala)" that: 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 a 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. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction... it is 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 expense, interest of justice and possibilities of undue hardship, and if the court is left in doubt as to whether under all the circumstances it is



proper to order transfer, the application 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 would be refused...”.

21. The Learned Counsel submitted that Kenyan courts have followed the Ugandan approach in this regard to regulate the exercise of discretion for the transfer of suit from one court to another. In this view the court in “*Hangzhou Agrochemicals Industries limited v Panda Flowers Ltd* (2012) eKLR”, the Court said that:-

“...the court should consider such factors as the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case”.

22. The Learned Counsel argued that from the foregoing the question which arises is:-

- i. Has the Applicant satisfied the criteria to transfer of ELC 015 OF 2021 to Mombasa ELC Court?
- ii. Who bears the costs of this application?

23. The Learned Counsel submitted that the Plaintiff/Applicant has filed to justify the transfer of Taveta Principal Magistrate’s ELC case No. 015 of 2021 because the said court has jurisdiction to hear and determine the dispute in regard to land parcel Kimorigo/Kimorigo/278 which suit property was below a sum of Kenya Shillings Ten Million (Kshs. 10,000,000/-). The remedies sought in the Magistrate’s court and those ones in this Honourable court are different. The transferring the said suit from Taveta to this Honourable court will not be convenient to the Defendant/Respondent in terms of expenses and himself and witnesses. Both the Plaintiff/Applicant and the Defendant/Respondent come from the same locality which is Taveta township, and both the subject matters are situated in Taveta which is convenient to both of them. About the monetary value of the property, that in so far as the Defendant/Respondent was concerned, the Taveta court has jurisdiction to hear and determine his claim before the Principal Magistrate there separately.

24. In conclusion, the Learned Counsel submitted that costs follow the event. The Learned Counsel urged the Honourable Court to dismiss the Plaintiff/Applicant’s notice of motion application dated 15th March 2023 with costs to the Defendant/Respondent.

V. Analysis & Determination.

25. I have carefully read and considered the pleadings herein by the Plaintiff and the Defendant, the written submissions, the myriad of cases cited herein by parties, the relevant provisions of the *Constitution* of Kenya, 2010 and statutes.
26. In order to arrive at an informed, Just, equitable and reasonable decision, the Honorable Court has three (3) framed issues for its determination. These are:-



- a. Whether the court should grant orders to withdraw, transfer and consolidate ELC NO.015 OF 2021- Kioko Sunza Kilonzo -vs -stephen Oddiaga filed at Taveta Principal Magistrate Court with the current suit?
- b. Who will bear the Costs of Notice of Motion application 15th March, 2023.

Issue a). Whether the Court Should Grant Orders to Withdraw, Transfer and Consolidate Elc No.015 Of 2021- Kioko Sunza Kilonzo -vs -stephen Oddiaga Filed at Taveta Principal Magistrate Court with the Current Suit

27. Under this sub – heading, the Court has discretion to order withdrawal and transfer of any suit pending before a subordinate court and direct that the same be heard before the superior court. In determining whether to withdraw, transfer ELC No. E015 OF 2021 and consolidate the same with the current suit, the court has to consider whether such action would be in the interest of justice. If it would not be expedient or convenient to withdraw and transfer a matter particularly where consolidation is sought as in the present matter, then the suit ought not to be withdrawn and transferred.
28. The issue of transfer of suit from the Magistrate’s Court to the Environment and Land Court is a matter of judicial discretion. Like all judicial discretion, it must be exercised in a judicious matter. It cannot be excised on the basis of whim, caprice or sympathy. It must be based upon some reason.
29. The transfer of a suit will only be made where it is expedient and in the interest of justice to do so. Odunga J. in the case of “*Hangzhou Agrochemicals Industries Limited v Panda Flowers Ltd* Civil Suit 97 of 2009 (2012) eKLR” held as follows:-

“..In my view, which view I gather from authorities and from the law, the court should consider such factors as the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case”.

30. The court has considered the reason why the Plaintiff is seeking transfer of Taveta ELC No. 015 of 2021 to this court. The reasons are not frivolous or fanciful. The court considers that some common questions of law and fact may arise in both suits which would make it prudent to have the two actions heard and determined together. The court is persuaded that the explanation for seeking transfer is reasonable. Accordingly, the court finds merit in the notice of motion dated 15th March, 2023 and the same shall accordingly be allowed.
31. The next aspect for consideration is whether or not the Plaintiff has made out a case for consolidation of the two suits. The factors to be considered in an application for consolidation were summarized in the case of “*RMG v NG & Another* [2013] eKLR” as follows;

“The principle is that consolidation of suits will be ordered where common questions of law or fact arise of such importance as to make it desirable that the whole of the subject matter be disposed of at the same time. This would mean that the suits are brought together for the purpose of disposing of them simultaneously; if the questions of law or fact to be



answered in each of them are one or common, and they can conveniently be disposed of simultaneously.”

32. Similarly, in the case of: “*Nyati Security Guards & Services Ltd v Municipal Council of a* [2004] eKLR” it was stated, inter alia, that;

“The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where;

- i. Some common questions of law or fact arise in both or all of them; or
- ii. The right or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions; or
- iii. For some other reason it is desirable to make an order consolidating them.”

33. Whereas the Defendant/Respondent opposes the application that the Taveta Principal Magistrate’s court has pecuniary jurisdiction to hear and determine the Defendant/Respondent’s case as the monetary value of his suit property was below a Kenya Shillings Ten Million (KShs. 10,000,000/-). He also contended that the subject matter of the Defendant/Respondent is land parcel Kimorigo/Kimorigo/278 which is situated in Taveta as to his witness who cannot afford travelling to Mombasa in the event the Taveta case is transferred to Mombasa and further that the Plaintiff herein filed a notice of preliminary objection in respect of the pecuniary jurisdiction of the Principal Magistrate’s court in Taveta, which preliminary objection was dismissed and he never appealed the dismissal.

34. The Plaintiff/Applicant on the other hand through his advocate submitted in ELC No. E015 OF 2021 that he is the owner of Kimorigo/Kimorigo/278, which parcel of land borders the Defendant’s Kimorigo/Kimorigo/285. The Plaintiff/Applicant filed the suit alleging the Defendant trespassed into his land and is interfering with the boundaries by erecting a perimeter wall that extends to curve in a portion of Plaintiff/Applicant’s parcel of land. As a result, the Plaintiff/Applicant is seeking orders inter alia permanent injunction and demolishing of the erected perimeter wall. The Defendant/Respondent opposed the allegations and maintained that the wall is on parcel No. Kimorigo/Kimorigo/285.

35. In Mombasa ELC No. 148 of 2022, the Plaintiff in this suit is the Administrator of the Estate of the late Francis Oddiaga a.k.a. Otiaka Asienga who is the registered owner of Plot No. Kimorigo/Kimorigo/285. The Plaintiff’s case is that the Defendant relative’s grave sites are extending the boundaries of the two plots into the plaintiff’s suit land. That the said encroached portion is what the Defendant/Respondent erroneously claims to be part of his Plot No. 278. The Plaintiff/Applicant is seeking orders inter alia removal of the graves from Plot No.285 and vacant possession. The Defendant/Respondent opposed the suit and filed a counter-claim in which he seeks the exact same orders as those in the Taveta suit.

36. Bearing in mind the above principles and considerations, the court is of the opinion that the Plaintiff/Applicant has demonstrated grounds for consolidation of the two suits. The court is thus of the view that the two suits may conveniently be tried and determined together so that all the issues in controversy amongst the parties are determined once and for all. The Honourable Court retains residual inherent power to make a transfer order for the ends of justice under the provision of Section 3A of the [Civil Procedure Act](#), Cap. 21.



Issue No. b). Who Will Bear the Costs of Notice Of Motion Application 15th March, 2023.

37. It is now well established that the issue of Costs is a discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. By event it means the results or outcome of the legal action or proceedings. See the decisions of Supreme Court “*Jasbir Rai Singh – Versus Tarchalan Singh*” eKLR (2014) and *Cecilia Karuru Ngayo – Versus – Barclays Bank of Kenya Limited*, eKLR (2014). In this case, as Court finds that the costs of the application shall be in the cause.

VI. Conclusion & Disposition

38. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties’ interest as regards to balance of convenience.

39. Ultimately in view of the foregoing detailed and expansive analysis to the rather omnibus application, this court arrives at the following decision and makes below order:-

- a. That the Notice of Motion application dated 15th March, 2023 is found to have merit and is hereby allowed in its entirety.
- b. That ELC No. 015 of 2021 – Kioko Sunza Kilonzo vs Stephen Oddiaga be and is hereby transferred pursuant to the provision of Section 18 (1) (b) i), (ii), & (iii) of the *Civil Procedure Act*, Cap. 21 to this court for trial and disposal within the next thirty (30) days from the date of the delivery of this Ruling.
- c. That upon such transfer that suit shall be consolidated with the instant suit for trial and disposal and the instant file to be the lead file for filing records and taking down proceedings.
- d. That the matter shall be mentioned on 18th January, 2024. to confirm availability of the court file from Taveta Law Courts and for directions.
- e. That Costs of the application shall be in the cause.

It is so ordered accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 27TH.DAY OF SEPTEMBER 2023.

HON. JUSTICE L. L. NAIKUNI, (JUDGE)

ENVIRONMENT AND LAND COURT AT MOMBASA

Ruling delivered in the presence of:

- a. M/s. Yumna, the Court Assistant.
- b. No appearance for the Plaintiff/Applicant.
- c. No appearance for the Defendant/Respondent.

