



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**MISC. CIVIL APPLICATION NO 18 OF 2016**

SILAS CHOKERA .....APPLICANT

VERSUS

EVANS KABERIA LIMUKI.....1ST RESPONDENT

JACKSON KATHIMBA .....2ND RESPONDENT

MWORIA MATHOKA.....3RD RESPONDENT

**R U L I N G**

This application is dated 18th February, 2016 and seeks orders:

1. ***THAT*** this Honourable Court be pleased to certify this application to be of an urgent nature and proceed to issue appropriate orders accordingly.
2. ***THAT*** the Honourable Court be pleased to issue an order for stay of hearing and/or proceedings in MAUA CMCC NO 176 of 2013 (EVANS KABERIA LIMUKI -VS- JACKSON KATHIMBA, MWORIA MATHOKA & SILAS CHOKERA) pending the hearing and determination of this application inter-parties and thereafter as the Court shall order.
3. ***THAT*** this Honourable Court be pleased to make an Order for the withdrawal of MAUA CMCC NO. 176 OF 2013 from the Chief Magistrate's Court at Maua and for transfer of the same to the Principal Magistrate's Court at Tigania for hearing and disposal.
4. ***THAT*** the costs of this application be borne by the 1st Respondent

The application is supported by the affidavit of SILAS CHOKERA and has the following grounds:-

- a. ***The 1st Respondent instituted MAUA CMCC NO. 176 OF 2013 against the 2nd and 3rd Respondents as the 1st & 2nd Defendants while the Applicant herein is named in the suit as the 3rd Defendant.***
- b. ***The said suit is in relation to Land Parcel No. 1740 NEW KIARE ADJUDICATION SECTION which is situated at the Kandebe Area of Rwanda Location within the local limits of Tigania Law Courts.***
- c. ***The Parties to the said suit including the Applicant and Respondents herein all reside within local limits of Tigania Law Courts and all the witnesses intended to testify in the suit all reside within or are within easy reach of the Tigania Law Courts.***
- d. ***The interests of the(sic) Justice will be better served if the said suit is transferred to Tigania Law Courts for hearing and disposal as it will be an(sic) expensive and tedious for parties to ferry their witnesses all the way to Maua Law Courts.***
- e. ***There is great need for the Court to visit the scene in quo on the ground.***
- f. ***This application is made in utmost good faith and the prayers being sought for, if granted,***

***will not in any way prejudice the Respondent's case, if any.***

The applicant was in Court *ex parte* and prayer 2 was granted on interim basis. I ordered that this application be heard *Inter partes* on 8/3/2015. On 08/03/2015, the applicant was not represented, although this hearing date was fixed solely at the instigation of Mr. Kitheka, the applicant's Advocate. The Court veritably deprecates the absence of the applicant's Advocate.

I find it necessary to reproduce in full the applicant's Supporting Affidavit and the 1st Respondent's Replying Affidavit.

The applicant's replying affidavit sworn on 18/02/2016 states:

1. ***THAT I am an adult male of sound mind, the Applicant herein and therefore competent to make and swear this affidavit.***
2. ***THAT the 1st Respondent herein instituted MAUA CMCC No. 176 of 2013 presently pending at the Maua Law Courts in which the 2nd and 3rd Respondents are the 1st and 2nd Defendants respectively while I have been named as the 3rd Defendant. (see a copy of the Plaintiff annexed hereto and marked as "SC 1").***
3. ***THAT the said suit is in relation to Land parcel No. 1740 NEW KIARE ADJUDICATION SECTION which is situated at Kandebe Area of Rwanda Location and which is within the Local limits of Tigania Law Courts.***
4. ***THAT all the parties to the said suit including myself and all the other Respondents herein reside in Kandebe Area and all the witnesses intended to testify herein all come from within or are within easy reach of Tigania Law Courts.***
5. ***THAT it will be tedious and expensive exercise to ferry witnesses to Maua Law Courts for the hearing of the said suit.***
6. ***THAT there is also great need for the Court to visit the Land in quo and be able to grasp the reality on the ground.***
7. ***THAT the interest of Justice will be better served if the said is thus transferred to the Tigania Law Courts for hearing and disposal.***
8. ***THAT this application is made in utmost good faith and the Orders being sought for, if granted, will not in any way prejudice the Respondents' case if any.***
9. ***THAT what is deponed hereinabove is true to the best of my knowledge, information, and belief.***

The 1st Respondent's Replying Affidavit Sworn on 02/03/2016 states:

1. ***THAT I am adult male of sound mind and the 1st respondent herein.***
2. ***THAT I have read the Applicant's application dated 18th February, 2016 and I wish to respond as follows:***
3. ***THAT the same application has been filed in bad faith and with only intention of delaying my matter herein.***
4. ***THAT though the same is devoid of any merits the timing of the same is malicious as the applicant had all the time to file the same even before the hearing of this matter commenced.***
5. ***THAT my case has proceeded extensively with participation of all other defendants save for the 3rd defendant.***
6. ***THAT I filed the matter herein on 29/10/2013 and the 1st and 2nd Defendants filed their defence on 26/10/2013 while the 3rd defendant filed his defence on 10th December, 2014 when I had already obtained interlocutory judgment against him.***
7. ***THAT on 29.10.2014 the counsel for the 3rd Defendant appeared in Maua Law Courts when my Advocate conceded to an application to set aside the interlocutory judgment on condition that the 3rd defendant would pay me Kshs 7,000/= being throw away costs annexed herein and marked EKLI is a copy of the Court proceedings and was given 21 days to comply.***
8. ***THAT on 04.02.2015 the 3rd defendant was present but his Advocate was absent when the interlocutory judgment was reinstated due to the 3rd Defendant's failure to satisfy the conditions earlier agreed for setting aside the same.***

9. ***THAT*** on 11th March, 2015 the 3rd Defendant's Counsel was absent despite proper service and the Court ordered that the matter to proceed where the same proceeded and my evidence was taken by Court.
10. ***THAT*** I was properly cross-examined by the 1st and 2nd Defendants during the said hearing as their counsel was also absent.
11. ***THAT*** on 20.05.2015 when my matter was supposed to proceed and I had two more witnesses the counsel for the 3rd defendant again appeared in Court and sought adjournment and setting aside of the interlocutory judgment and further sought 7 days to put in defence and comply with order 11 of the C.P.R which Court again granted and the 3rd defendant was again ordered to pay me further Kshs. 3500.00 which he has not paid me to date.
12. ***THAT*** on 3/6/2015 the same matter was coming up in Court to confirm if the 3rd defendant has filed his document as sought earlier which he had not filed by then and the Court noted that the 3rd defendant was not serious with this case.
13. ***THAT*** on 15/2/2016 when my matter again proceeded for hearing the 3rd defendant's Advocate was again absent despite the date earlier having been taken by consent of my advocate and the 3rd defendant's Advocate and my two witnesses were there.
14. ***THAT*** the same date I was again cross-examined well by the 1st and 2nd defendant (sic) whom their Advocate was also absent.
15. ***THAT*** it is (sic) from the above record that the 3rd Defendant has done everything at his disposal to delay conclusion of this matter which is further evidenced by his present application made when my matter is almost concluded.
16. ***THAT*** the location of the suit property lies squarely within the jurisdiction of Tigania and Maua Law Courts.
17. ***THAT*** all along the defendants have been attending Court no one has ever complained of Maua being expensive to reach or lacking in jurisdiction.
18. ***THAT*** I urge the Honourable Court to find that the 3rd Defendant's application is solely made to delay my matter and cause injustice to me.
19. ***THAT*** the defendants are in illegal occupation of my land hence a delay in this matter is to their advantage as they continue enjoying my properties.
20. ***THAT*** it is in the best interest of justice that the application herein be dismissed.
21. ***THAT*** what is deposed to herein is true to the best of my knowledge, belief and information.

I have also perused the proceedings at the Maua Chief Magistrate's which Mr. Mutembei for the defendants, asked the Court to take note of.

I do note that the hearing of the suit which has spawned this application has been partly heard at Maua. 2 of the Plaintiff's witnesses have been heard. Had the applicant informed the Court that the hearing of this case, by the time he filed this application, was substantial, perhaps the interim orders granted at the exparte stage on 26/2/ 2016 would not have been issued.

The main reason that the applicant has proffered for wanting this suit transferred to Tigania Law Courts is that Tigania is more convenient to the parties as it is nearer to all of them. The other reason that it would be necessary to visit the locus in quo is not at all persuasive. The Maua Court, if it deems it necessary, can visit the Locus in quo.

The 1st Respondent in his Replying Affidavit has set down a Chronology of the happenings in this case. These are also palpably evinced in the proceedings at Maua Court. I find that the applicant, has, to a certain extent, been responsible for delay in the expeditious hearing and determination of this suit. I note that the Applicant has robustly participated during the various hearings that have taken place at Maua.

Whereas I do not wish to impute forum shopping as one of the aims of the applicant in seeking to have this suit transferred from Maua Law Courts to Tigania Law Courts, I do opine that such transfer would have the effect of delaying the expeditious hearing and disposal of this suit.

Having considered all the circumstances and issues surrounding this application, **I find it unmeritorious. I dismiss it with costs to the respondents.**

**The Interim Orders in terms of Prayer 2 granted at the exparte stage on 26/2/2016 are vacated forthwith.**

**It is so ordered.**

**Delivered in Open Court at Meru this 22nd day of March, 2016 in the presence of:-**

CC: Daniel/Lilian

Mutunga h/b Kitheka for the Applicant

Mwirigi h/b Mutembei for 1st Respondent

**P. M. NJOROGE**

**JUDGE**