



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT BUNGOMA**

**ELC MISCELLANEOUS APPLICATION NO. E017 OF 2021**

**DENNIS MUKORWE WAMOCHA.....PLAINTIFF**

**VERSUS**

**MADAM VICKY CHELAGAT <sup>T/A</sup> ASSISTANT COUNTY**

**COMMISSIONER BUNGOMA EAST.....1<sup>ST</sup> DEFENDANT**

**EDWARD MAKHANU alias SIMITI alias EDWARD WANYONYI SIMITI.....2<sup>ND</sup> DEFENDANT**

**MR GEORGE ONGUTU**

**COUNTY LAND REGISTRAR BUNGOMA COUNTY.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. On 16<sup>th</sup> March 2015, **MUKUNYA J** directed that **BUNGOMA ELC CASE NO 52 of 2018** be transferred to the **CHIEF MAGISTRATE'S COURT BUNGOMA**. For some un – explained reasons, the file still remained in this Court.
2. Upon discovery of that anomaly, on 30<sup>th</sup> July 2018 I made another order re – transferring the case back to the **CHIEF MAGISTRATE'S COURT**. The record shows that the matter has since been mentioned in that Court and the **SENIOR PRINCIPAL MAGISTRATE HON MUTAI** has even delivered a ruling in the matter.
3. I now have before me this miscellaneous application dated 1<sup>st</sup> December 2021 seeking the transfer of this case to **WEBUYE CHIEF MAGISTRATE'S COURT**. The basis of the application is that the subject matter being land parcel **NO NDIVISI/MUCHI/1614** is situated within the jurisdiction of the **CHIEF MAGISTRATE'S COURT WEBUYE**. According to the Applicant **DENNIS MUKORWE WAMOCHA**, the transfer of this case to **WEBUYE** will *“cut down on unnecessary travel and other expenses incidental thereto.”*
4. I have considered the application. I do not find it necessary to make any directions that it be served upon the Respondent for hearing inter – parte. I intend to make directions without the in – put of the Respondents for the following reasons.
5. Firstly, the orders transferring **BUNGOMA ELC CASE No 52 of 2018** from this Court to the Subordinate Court were made by this Court on it's own motion. There would be no prejudice in doing so again as this will only involve varying of the orders issued on 16<sup>th</sup> March 2015. There is nothing to suggest that the orders issued by **MUKUNYA J** on 16<sup>th</sup> March 2015 and re – issued by myself on 30<sup>th</sup> July 2018 prejudiced any of the parties herein.
6. **Section 18** of the **Civil Procedure Act** empowers this Court, *“on it's own motion without such notice”* to transfer this suit to the Subordinate Court.
7. Finally, under **Section 1B(i) (d)** of the **Civil Procedure Act**, among the overriding objectives of the Act include: -

*“the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.”*  
Emphasis added.

The Plaintiff/Applicant having deponed that the transfer of this case from the **CHIEF MAGISTRATE'S COURT BUNGOMA** to the **WEBUYE COURT** will *“cut down on unnecessary travel and other expenses,”* it is only proper that this Court grants the orders sought.

From the pleadings, there is nothing to suggest that the **WEBUYE PRINCIPAL MAGISTRATE HON MUNYEKENYE** is not seized of the requisite pecuniary jurisdiction to determine this dispute.

8. In the circumstances, and to ensure that this matter is heard in the Court nearest to the parties, I make the following orders: -

1. **BUNGOMA CHIEF MAGISTRATE ELC CASE No 52 of 2018 is hereby transferred to WEBUYE SENIOR PRINCIPAL MAGISTRATE'S COURT for mention and further directions as to hearing.**
2. **It be mentioned before the SENIOR PRINCIPAL MAGISTRATE HON M. MUNYEKENYE on 16<sup>th</sup> February 2022.**
3. **The orders issued by MUKUNYA J on 16<sup>th</sup> March 2015 and re – iterated by myself on 31<sup>st</sup> July 2018 are vacated.**

**Boaz N. Olao.**

**J U D G E**

**10<sup>th</sup> February 2022.**

Ruling dated, signed and delivered at **BUNGOMA** on this 10<sup>th</sup> day of February 2022 by way of electronic mail with notice to the parties.

**Boaz N. Olao.**

**J U D G E**

**10<sup>th</sup> February 2022.**