



**Mwangi v Gakuo (Environment & Land Miscellaneous Case
E055 of 2024) [2025] KEELC 4122 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4122 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND MISCELLANEOUS CASE E055 OF 2024**

MAO ODENY, J

MAY 30, 2025

BETWEEN

JOHN KABUGI MWANGI PLAINTIFF

AND

GEORGE GAKUO DEFENDANT

RULING

1. This ruling is in respect of the Plaintiff²/Applicant's Notice of Motion dated 18th December, 2024 which seeks the following orders:
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That this honorable court be pleased to grant leave to the Plaintiff Respondent to file and serve his response to the application dated 6th December 2024.
 - e. That the cost of this application be borne by the Respondent.
2. The application was supported by the affidavit of John Kabugi Mwangi, the Plaintiff/Applicant sworn on 18th December, 2024 where he deponed that on or about 6th December, 2024, counsel for the Respondent filed an application for transfer of CMELC 77 of 2018. That the same was heard Ex-parte on 9th December, 2024 and on 11th December, 2024 his advocate was served with an order transferring the matter to the Environment and Land Court at Nakuru.
3. He deponed that the lower court lacks the requisite jurisdiction to transfer the instant suit and particularly the Defendants/Applicants Counter-claim to the Environment and Land Court as the same was filed in a court of incompetent jurisdiction hence the same was moot.



4. George Gakuo Karari filed a Replying Affidavit sworn on 8th January, 2025 and deponed that he filed his defence and counterclaim in Nakuru Magistrate Court ELC CASE No 77 of 2018 and subsequently the Court of Appeal rendered a decision to the effect that matters of adverse possession fall exclusively under the jurisdiction of the Environment and Land Court (ELC). He deponed that he filed an application to this court seeking to transfer the lower court file to the Environment and Land Court for hearing and determination.
5. He deponed that he disclosed to the court that the Plaintiff/Applicant had raised a preliminary objection against the counterclaim and deponed that the Environment and Land Court granted the order for transfer. It was his deposition that the court did not issue any directions regarding service or inter-parties hearing of the application to transfer and urged the court to dismiss the Plaintiff's application with costs.

Applicant's Submissions

6. Counsel for the Applicant filed submissions dated 11th February, 2025 and identified the following issues for determination:
 - a. Whether the lower Court has jurisdiction to transfer CMC ELC CASE No 77 of 2018 to this Court for trial and disposal?
 - b. Whether this court has jurisdiction to set aside an ex-parte order?
 - c. Whether the Applicant is entitled to costs?
7. On the first issue, counsel submitted that the Chief Magistrates' courts lack jurisdiction to determine a claim for adverse possession and as such, neither the Environment and Land Court nor any other Court has power to transfer the suit to itself. Counsel urged the court to set aside the order for transfer and relied on Order 51 Rule 15 of the Civil Procedure Rules.
8. Counsel also relied on the cases of *Mokua vs Abuga & 2 others* (Environment and Land Miscellaneous Application E001 of 2022) [2022] KEELC 2965 (KLR), *Equity Bank Limited vs Bruce Mutie Mutuku T/A Diani Tour & Travel* [2016] eKLR, *Abraham Mwangi Waigwi vs Simon Mbiriri Wanjiku & Another* [2012] eKLR and *Kagenyi vs Musiramo & another* (1968) E.A 43.
9. On the second issue, counsel submitted that this Honourable Court in exercise of its discretionary powers provided for under Section 18 of the *Civil Procedure Act*, acted in excess of its jurisdiction and thus should reverse and set aside the order of transferring Nakuru Magistrate Court ELC CASE No 77 of 2018 to itself.
10. Counsel further submitted that the Respondent's application for transfer of the Counter-claim was heard ex-parte and that the Applicant was never served pursuant to Order 51 Rule 13 (3) of the Civil Procedure Rules and relied on the cases of *Wachira Karani vs Bildad Wachira* (2016) eKLR and *Gerita Nasipondi Bukunya & 2 others vs Attorney General* [2019] eKLR.
11. Counsel urged the court to dismiss the Respondent's Application dated 6th December, 2024 with costs and the transfer orders of CMC ELC Case No 77 of 2018 to this Honourable court be set aside.

Analysis and Determination

12. The issue for determination is whether this court should grant leave to the Plaintiff/Applicant to file and serve his response to the application dated 6th December 2024. The Plaintiff/Applicant contends that the lower court lacked the requisite jurisdiction to transfer the instant suit and particularly the



Defendants/Respondent's Counter-claim to the Environment and Land Court as the same was filed in a court of incompetent jurisdiction hence the same was moot.

13. The Respondent filed an application for transfer of a suit from the lower court to the Environment and land court. The Court considered the application and allowed the transfer of the suit.
14. Section 18 of the *Civil Procedure Act* gives the court power to withdraw or transfer a suit. It provides as follows:

Power of High Court to withdraw and transfer case instituted in subordinate court

- (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) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (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.
- (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

15. The court heard the Application and allowed the transfer and such transfer does not cause any prejudice as the matter is yet to be heard on merit. The submissions by counsel for the Applicant does not support the application at hand as it questions the court's action of transferring the matter on the ground that it did not have jurisdiction to do so.
16. This matter was transferred by this court and not the Chief Magistrate, further if counsel is questioning the manner in which the matter was transferred, if aggrieved then he should have filed an appeal and not the current application.
17. I have considered the application, submissions by counsel and find that it lacks merit and is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF MAY 2025.

M. A. ODENY

JUDGE

