



**Obayo v Efwanila & 2 others (Environment and Land Miscellaneous Application  
E008 of 2024) [2025] KEELC 1242 (KLR) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1242 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E008 OF 2024  
BN OLAO, J  
MARCH 12, 2025**

**BETWEEN**

**ANTONINA ZEBBY OBAYO ..... APPLICANT**

**AND**

**SARAH MMBOGA EFWANILA ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR, BUSIA COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. On 24<sup>th</sup> January 2023 this Court on it's own motion, transferred Busia ELC Case File No 22 of 2021 to the Subordinate Court for hearing after taking the view that the subject matter was within the pecuniary jurisdiction of that Court which view was supported by MR Ashioya counsel for the 1<sup>st</sup> Defendant. The other parties were not present then and this case ended up being registered in the Subordinate Court as Busia Chief Magistrates Court ELC Case No 002 of 2023.
2. The Plaintiff has now approached this Court vide his Notice of Motion dated 16<sup>th</sup> September 2024 in which he seeks the substantive order that this Court reviews the order of transfer and re-call ELC File No 22 of 2021 from the Subordinate Court for hearing and determination to this Court.
3. The gist of the application is that the subject matter of the dispute which is land parcel No South Teso/Angoromo/3223 has been assessed and the value is Kshs.40 million. Annexed to the Motion is a valuation report by the firm of Rightend Appraisal dated 19<sup>th</sup> September 2023 confirming that valuation.
4. When the matter came up today, Ms Nyagah counsel for the Plaintiff informed the Court that although the Motion had been served on counsel for the Defendants, no response has been filed thereto. The Motion is therefore not opposed.



5. I have considered the Motion unopposed as it is together with the valuation report which states that the value of the subject matter of this suit is Kshs.40 million.
6. The reasons why this Court transferred this case to the Subordinate Court was because I had noticed from the pleadings that there was also Busia CMCC No 211 of 2021 involving the same subject matter in the Subordinate Court. It is always preferable that no two Courts should determine two disputes over the same subject matter at the same time. My decision therefore was informed by the fact that since there was already another case No Busia CMCC 211 of 2021 on-going in the Subordinate Court, that clearly means that the Subordinate Court has the requisite jurisdiction over this dispute.
7. Having said so, however, and in view of the fact that the Motion has not been challenged, I allow it and direct as follows:
  1. Busia CMCC No 002 of 2023 shall be re-transferred to this Court for hearing and determination.
  2. It shall not, as suggested by counsel for the Plaintiff be re-opened as E022 of 2021 which file should have been closed on 24<sup>th</sup> January 2023. Rather, it will be re-opened as a new file.
  3. The new case file will be E001 of 2025.
  4. Mention shall be on 25<sup>th</sup> March 2025 for directions.
  5. The Plaintiff shall serve the Defendants accordingly and note the new case file No E001 of 2025.

**BOAZ N. OLAO**

**JUDGE**

**12<sup>TH</sup> MARCH 2025**

**RULING DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL ON THIS 12<sup>TH</sup> DAY OF MARCH 2025.**

**BOAZ N. OLAO**

**JUDGE**

**12<sup>TH</sup> MARCH 2025**

