



**Abidha v Owang' & 3 others (Environment & Land Case
4 of 2024) [2024] KEELC 6698 (KLR) (14 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6698 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND CASE 4 OF 2024
AY KOROSS, J
OCTOBER 14, 2024**

BETWEEN

PETER NICHOLUS OWINO ABIDHA PLAINTIFF

AND

ISAACK OGWEYO OWANG' 1ST DEFENDANT

CHARLES OKUDO OSORE 2ND DEFENDANT

MAURICE OMONDI OKUDO 3RD DEFENDANT

DAN OTIENO OKUDO 4TH DEFENDANT

RULING

1. This ruling emanates from the decision made on 10/07/2024 by Hon.PM, E.Malesi who recused himself from handling the subject matter in Madiany, PM ELC no. E013 of 2023.
2. In recusing himself as envisaged by Rule 21 of the *Judicial Service (Code of Conduct and Ethics) Regulations* and also bearing in mind he was the only competent trial magistrate with jurisdiction to handle environment and land court matters in Madiany Law Courts, the learned trial magistrate invoked this court's supervisory jurisdiction by seeking directions on the transfer of Madiany, PM ELC no. E013 of 2023 to a court station with competent jurisdiction.
3. The order of the learned magistrate for the remission of the lower court file to this court for directions and transfer is predicated on constitutional and statutory provisions.
4. Article 165 (6) and (7) of the *Constitution of Kenya* grants this court jurisdiction to supervise subordinate courts, any person, body, or authority exercising a judicial or quasi-judicial function and can call for records from them or give any direction it considers appropriate to ensure the fair administration of justice.



5. Section 18 of the *Civil Procedure Act* also donates power to this Court to transfer suits. It states as follows;

- “(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 - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.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.”

6. In the case of *David Kabungu v Zikarenga & 4 others* Kampala HCCS No. 36 of 1995, the court stated as follows on circumstances under which an order to transfer suits may be granted: -

“Section 18(1) of the Civil Procedure Act gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. The burden lies on the Applicant to make out 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 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 or the suit has been filed in a particular court for the purposes of working injustice. What the court has to consider is whether the Applicant has made a case to justify it in closing doors of the court on which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction It is a 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 expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication 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 could be refused...”



7. It is noteworthy that Section 1A(1) of the *Civil Procedure Act* provides that the overriding objective of the *Act* and the *Rules* made thereunder are to facilitate the just, expeditious, proportionate, and affordable resolution of disputes.
8. In the instance case, the learned trial magistrate has recused himself from handling the suit and has sought for this court to exercise its supervisory powers and transfer the matter to another court.
9. In the absence of any other magistrate in Madiany Law Courts with jurisdiction to handle environment and land court matters other than Hon. E. Malesi, it is in the interests of justice that the matter be transferred to another court station and be handled by a magistrate with competent jurisdiction.
10. Some parties appeared before this court on 2/10/2024 and submitted that in the circumstances of this case, Bondo Law Courts was most appropriate to them.
11. Indeed, geographically, amongst all the courts that this court supervises within Siaya, Bondo is the most proximate court to Madiany Law Courts and will save the parties great expense. I find that Bondo Law Courts is the most appropriate court to handle this matter.
12. For the reasons and finding stated above, I ultimately issue the following disposal orders: -
 - a. That there be and is hereby issued an order withdrawing and transferring Madiany PM ELC No. E013 of 2023- *Peter Nicholus Owino Abidha v Isaac Ogweyo Ogwang' & 2 Others* to the Bondo Law Courts for trial and final disposal.
 - b. This file is hereby effectively marked as closed.

Orders accordingly.

DELIVERED AND DATED AT SIAYA THIS 14TH DAY OF OCTOBER 2024.

HON. A. Y. KOROSS

JUDGE

14/10/2024

**JUDGMENT DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM IN THE PRESENCE OF:**

Mr. Kofuna for the plaintiff

Miss Akinyi for the defendants

Court assistant: Mr. Ishmael Orwa.

