



**Ntururu & 2 others v Omweri (Sued as legal administrator of the Estate of Enock Omweri Mabwage) & 2 others (Miscellaneous Application E006 of 2022) [2023] KEELC 18546 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18546 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
MISCELLANEOUS APPLICATION E006 OF 2022**

**EM WASHE, J**

**JULY 6, 2023**

**BETWEEN**

**PETER PEPERUA OLE NTURURU ..... 1<sup>ST</sup> APPLICANT**

**PETER SAITOTI TUKERO ..... 2<sup>ND</sup> APPLICANT**

**STEPHEN LETAYA OLOOMPALA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**SYLVESTER RAKUBI CHIBA ..... 1<sup>ST</sup> RESPONDENT**

**JOSHUA MWEBI OMWERI (SUED AS LEGAL ADMINISTRATOR OF THE ESTATE OF ENOCK OMWERI MABWAGE) ..... 2<sup>ND</sup> RESPONDENT**

**CHARLES ONGINA RWONA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Applicants herein in their Notice of Motion Application dated 26<sup>th</sup> October 2022 (hereinafter referred to as “the present Application”) are seeking for the following Orders; -
  - a. The Honourable Court be pleased to withdraw and transfer Kilgoris SPM ELC Case No. E036 of 2021, Kilgoris SPM ELC Case No. E030 of 2021, Kilgoris SPM ELC Case No. E034 of 2021 and Kilgoris SPM ELC Case No. E033 of 2021 touching on L.R.No. Narok/Nkararo/157,160,264 & 158 respectively to this Honourable Court for hearing and final disposal.
  - b. Costs of this application do abide the cause.
2. The prayers hereinabove are supported by grounds adduced in the body of present application as well as the supporting affidavit sworn on the 26<sup>th</sup> October 2022 which can be summarised as follows; -



- i. The parties herein have pending proceedings known as Kilgoris SPM ELC Case No. E036 OF 2021, Kilgoris SPM ELC Case No. E030 of 2021, Kilgoris SPM ELC Case No. E034 OF 2021 and Kilgoris SPM ELC Case No. E033 OF 2021 before the Senior Principal Magistrates Court in Kilgoris.
  - ii. The Applicant is seeking for the said proceedings to be withdrawn from the Senior Principal Magistrate's Court and transferred to this Honourable Court for a speedy hearing and determination.
  - iii. The Applicant is of the view that this Honourable Court has appropriate jurisdiction to order the withdrawal of the said proceedings before the Senior Principal Magistrates Court and transfer the same to this Honourable Court for hearing and final determination.
3. The present Application was duly served on the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who opposed the same with the 1<sup>st</sup> Respondent filing Grounds of Opposition dated 1<sup>st</sup> March 2023 as well as a Replying Affidavit sworn on the 1<sup>st</sup> March 2023 while the 2<sup>nd</sup> Respondent filed Grounds of Opposition dated 14<sup>th</sup> February 2023.
  4. The Honourable Court thereafter directed the present application to be canvassed by way of written submissions.
  5. The Applicant filed their submissions on the 9<sup>th</sup> of March 2023, the 1<sup>st</sup> Respondent on the 5<sup>th</sup> of June, 2023, the 2<sup>nd</sup> Respondent on the 9<sup>th</sup> of June 2023 and the 3<sup>rd</sup> Respondent on the 9<sup>th</sup> of May 2023.
  6. This Honourable Court has indeed perused the present Application, the Grounds of Opposition, the Replying Affidavit and finally the submissions of the parties and in a nutshell, the issues for determination are as follows; -

**Issue No. 1-**

Has the applicant provided sufficient reason for this honourable court to withdraw the sub-ordinate court proceedings and transfer the same to the superior court?

**Issue No. 2-**

Does the honourable court have jurisdiction to order the withdrawn of suits in the sub-ordiante court and transfer the same to the superior court for hearing & determination?

**Issue No.3-**

Is the applicant entitled to the prayers sought in the present application?

**Issue No.4-**

Who bears the costs of the present application?

7. This Honourable Court having duly identified the above-mentioned issues, the same will now be discussed and determined as provided hereinbelow.

**Has the applicant provided sufficient reason for this honourable court to withdraw the sub-ordinate court proceedings and transfer the same to the superior court?**

8. The Applicant herein is seeking an Order of this Honourable Court to withdraw the proceedings in the Sub-Ordinate Court and transfer the same to this Honourable Court for hearing and final determination.



9. The main ground for making this prayer is the expeditious hearing and determination of the pending suits before the Sub-Ordinate Court.
10. The 1<sup>st</sup> Respondent has opposed the said prayer on the grounds that the present Application is based on speculation which is without any justifiable reason and consequently therefore, such a withdrawal and transfer would interfere with case management and ultimately result to a delay in the hearing and determination of the pending proceedings thereof.
11. The 2<sup>nd</sup> Respondent opposed the prayers in the present Application by first indicating that both the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants together with the 1<sup>st</sup> Respondents are not parties in the proceedings known as Kilgoris SPM ELC CASE NO. 30 of 2021 and Kilgoris SPM ELC Case No. 36 OF 2021.
12. Secondly, the 2<sup>nd</sup> Respondent indicated that the Sub-Ordinate Court handling the proceedings known as KILGORIS SPM ELC Case No. 30 OF 2021 and Kilgoris SPM ELC Case No. 36 of 2021 has the required jurisdiction to entertain and determine the said proceedings.
13. Further to the above grounds, the 2<sup>nd</sup> Respondent stated that the Applicants had now formed a habit of filing endless applications with a view of delaying the hearing of the said proceedings and this is one of their tactics to delay the said proceedings from being determined in the sub-ordinate Court and therefore the same should be dismissed forthwith.
14. The 3<sup>rd</sup> Respondent did not file any Grounds of Opposition or a Replying Affidavit but filed submissions which appeared similar to those of the 2<sup>nd</sup> Respondent word by word.
15. From the analysis of the submissions filed herein, the Honourable Court appreciates that the Applicants are seeking to have the pending proceedings in the Sub-Ordinate Court withdrawn and transferred to this Honourable Court for speedy hearing and determination.
16. The Respondents have not made any submissions on the ability of this Honourable Court to hear and determine these pending proceedings expeditiously as anticipated by the Applicant.
17. Indeed, this Honourable Court which has supervisory powers over the Sub-Ordinate Courts handing the pending proceedings is well aware that for a long time, the only Sub-Ordinate Court that had been gazetted to handle Environment & Land Court cases was the Senior Principal Magistrates Court.
18. As a result of only one Sub-Ordinate Court being authorised to handle Environment and Land Court cases in the Transmara region, there has been a backlog of Environment and Land Cases pending before the Sub-Ordinate Court.
19. Nevertheless, towards the end of the year 2022, the Honourable Chief Justice gazetted two other Sub-Ordinate Courts to also deal and determine Environment and Land Cases within Transmara region.
20. This gazettelement by the Honourable Chief Justice has greatly assisted the Senior Principal Magistrate's Court in reducing the backlog of pending cases which were in the+ station.
21. However, the concentrated efforts of all the three Judicial Officers will still take time to reduce the accumulated backlog as each matter has to be heard and determined on its own merit.
22. On the other hand, this Honourable Court seem to have much less active files than the Sub-Ordinate Courts.
23. It is therefore in the interest of justice that where parties request for their files to be transferred to this Honourable Court for expeditious hearing and determination, then such a prayer should be considered favourably.



24. The core mandate of both the Judges and the Judicial Officers is simply to dispense justice and conclude new and pending cases.
25. In essence therefore, this Honourable Court is satisfied that the Applicant has provided a sufficient and adequate reason as to why the pending proceedings before the Sub-Ordinate Court should be withdrawn and transferred to this Honourable Court for expeditious hearing and determination thereof.

**Does the honourable court have jurisdiction to order the withdrawal of suits in the sub-ordinate court and transfer the same to the superior court for hearing & determination?**

26. The second issue for determination is whether or not this Honourable Court has jurisdiction to order the withdrawal of the proceedings in the sub-ordinate Court and transfer the same to the superior Court.
27. The express provisions of Section 18 of the *Civil Procedure Act*, Cap 21 laws of Kenya provide as follows; -

- “(1) 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”.

28. It is therefore clear from the above provisions that this Honourable Court has jurisdiction to withdraw a suit from a Sub-Ordinate Court and transfer the same to the Superior Court for hearing and determination.
29. However, such a withdrawal from the Sub-Ordinate Court to the Superior Court must be of cases which were filed in a Court of competent jurisdiction.
30. If the pending case being sought to be withdrawn and transferred to the superior Court is filed in a Court without jurisdiction, then such a withdrawal and transfer cannot be granted.



31. In the present Application, all the parties have admitted that the Sub-Ordinate Court which the proceedings being sought to be withdrawn and transferred to this Honourable Court are pending has jurisdiction to hear and determine the same.
32. This being the case, then such proceedings pending in the Sub-Ordinate Court with proper jurisdictions can be withdrawn and transferred to the Superior Courts by virtue of Section 18 of the Civil Procedure Rules, 2010 as sought in the present application.

**Is the applicant entitled to the prayers sought in the present application?**

33. The third issue for determination is whether or not the Applicant is entitled to the prayer sought in the present Application.
34. Based on the determination in Issue No.1 and Issue No.2, this Honourable Court is inclined to granted the orders sought in the present Application.

**Who bears the costs of the present application?**

35. Lastly, keeping in mind that the present Application is founded on the need of an expeditious determination of the pending proceedings between the parties, the costs of the present Application will abide the outcome of the substantive suits thereof.

**Conclusion**

In conclusion therefore, this Honourable Court hereby makes the following Orders as appertains the Notice of Motion application dated 26<sup>th</sup> October 2022; -

- a. The proceedings namely Kilgoris SPM No. E036 of2021, Kilgoris SPM ELC Case No. E030 OF 2021, Kilgoris SPM ELC case no. E034 OF 2021 and Kilgoris SPM ELC Case No. E033 of2021 touching on L.R.No Narok/Nkararo/157,160,264 and158 pending before the Kilgoris Senior Principal Magistrate’s Court Be and are hereby withdrawn and transferred to the Kilgoris ELC Court for expeditious hearing & determination thereof.
- b. The costs of the present application will abide the outcome of the substantive suits thereof.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 6<sup>TH</sup> JULY 2023.**

**EMMANUEL.M.WASHE**

**JUDGE**

**In the presence of:**

Court Assistant: Mr. Ngeno

Advocates forthe applicants:Mr. Kiprotichh/bforMr. Ochwangi

Advocatesfor the respondents: Mr. Ombachifor the 1<sup>st</sup> respondent & h/b for Mr. Okemwa for the 2<sup>nd</sup> and 3<sup>rd</sup> respondent.

