



**Khaseda & another v Makokha (Environment & Land Case
2 of 2022) [2022] KEELC 14721 (KLR) (8 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14721 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND CASE 2 OF 2022
AY KOROSS, J
NOVEMBER 8, 2022**

BETWEEN

MARY KHALONYERE KHASEDA & ANOTHER PLAINTIFF

AND

MARGARET ADHIAMBO MAKOKHA DEFENDANT

RULING

1. Ukwala PM ELC No 47 of 2018 was transferred by the magistracy to this court for hearing and disposal. It issued the following verbatim reliefs;
 - a) The court has no jurisdiction to handle where(sic) the present claim as per directions of court issued on August 21, 2022
 - b) Parties directed to appear before the deputy registrar in Siaya HC/ELC for directions herein.
 - c) File is transferred to Siaya HC/ELC for directions.
2. It is not in doubt that upon the gazettment of magistrates to hear and determine ELC cases, this court transferred the suit to the magistracy. This was in pursuance to the powers bestowed upon it by section 18 of the *Civil Procedure Act*. This provision provides 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 - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.
- (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn”.

3. Upon transfer, the suit was heard and reserved for judgment. Instead of rendering itself, the magistrates’ court on its volition transferred the suit to this court. In essence, it acted ultra vires and usurped the authority of this court.

4. section 18 of the Civil Procedure Act, is very clear that it is only a superior court that has the preserve to either transfer a suit to or withdraw it from the magistracy and not vice versa. This vertical authority is in consonance with the principle of hierarchy of courts.

5. In order to give effect to this principle, the constitutional architecture established this court under article 162(b) of the Constitution of Kenya and the magistracy under article 169(1)(a) of the same Constitution. In giving effect to these articles, section 13 (1) of the ELC Act provides that this court shall hear and determine appeals from the magistracy and not vice versa. This provision states thus;

“The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land”

6. It is my finding that the magistracy erred in transferring the suit to this court and I direct that it be remitted back to Ukwala Law Courts for hearing and determination.

7. For the benefit of doubt, the magistracy has jurisdiction to hear the originating summons. The only delineation between it and the ELC is on pecuniary jurisdiction which is capped at Kshs 20,000,000/. See section 7 and section 9 (a) of the Magistrates’ Courts Act and the decision of Patrick Ndegwa Munyua v Benjamin Kiiru Mwangi & another [2020] eKLR where Ohungo J, held as follows;

“The upshot of the provisions at section 26 (3) and (4) of the Environment and Land Court Act, 2011 and section 9 (a) of the Magistrates’ Courts Act, 2015 is that magistrates who are duly gazetted and have the requisite pecuniary jurisdiction have jurisdiction and power to handle cases involving occupation of and title to land. Claims in the nature of adverse possession involve title to land since the claimant ultimately seeks an order that he be registered as the proprietor of the land”

8. Ultimately, I issue the following disposal orders;

- a) That Ukwala ELC CASE No 2 of 2022 (OS) is hereby remitted back to Ukwala Law Courts for hearing and determination.



- b) The file in Siaya ELC shall be marked as closed.
- c) A copy of this ruling shall be remitted to Ukwala Law Courts.

9. It is so ordered.

DELIVERED AND DATED AT SIAYA THIS 8TH DAY OF NOVEMBER 2022.

HON A Y KOROSS

JUDGE

November 8, 2022

