



**Peter & 4 others v Mwangi (Environment and Land Miscellaneous Application  
E001 of 2025) [2025] KEELC 5869 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5869 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2025  
AK BOR, J  
JUNE 25, 2025**

**BETWEEN**

**NANCY WANGARI PETER ..... 1<sup>ST</sup> APPLICANT  
HANNAH NJOKI GITAU ..... 2<sup>ND</sup> APPLICANT  
LEAH WATIRI GITAU ..... 3<sup>RD</sup> APPLICANT  
DANIEL WAWERU GITAU ..... 4<sup>TH</sup> APPLICANT  
BENJAMIN NJOROGE GITAU ..... 5<sup>TH</sup> APPLICANT**

**AND**

**MBICHIRE BENARD STEPHEN MWANGI ..... RESPONDENT**

**RULING**

1. Through the application dated 17/1/2025, the Applicants seek the transfer of Siakago Principal Magistrate Court ELC Case No. E037 of 2022 to the Environment and Land Court (ELC) for hearing and disposal. The application was made on the grounds that after filing the suit before the Siakago Magistrates Court, it emerged during the hearing that the value of the land known as Mbeere/Wachoro/1688 (the suit land) was approximately Kshs. 15 million which exceeds the pecuniary jurisdiction of the Siakago PM's Court.
2. The application was supported by the affidavit of Leah Watiri Gitau sworn on 17/1/2025 and her supplementary affidavits sworn on 13/3/2025 and 23/4/2025. The 3<sup>rd</sup> Applicant exhibited a valuation report done on the suit land by Rwingo Valuers which gave the value of the suit property as Kshs. 55 million.
3. The Respondent opposed the application through the replying affidavit sworn on 10/2/2025 and the further affidavit sworn on 25/3/2025 in which he deponed that the application was incompetent and



- a non-starter since the Principal Magistrate at Siakago Court did not have jurisdiction to hear and determine the matter.
4. The court directed parties to file and exchange written submissions, which it has considered. The Applicants relied on Section 18 of the *Civil Procedure Act* on the general power of the court to transfer suits. They urged that their claim was for the removal of the caution registered against their land which could not be quantified.
  5. The Respondent submitted that the application dated 17/01/2025 should not be allowed since the court declared that it did not have the pecuniary jurisdiction to hear and determine the matter and that since the suit was instituted in a court without jurisdiction, it was incompetent and non-starter.
  6. He argued that Section 7 of the *Magistrates' Courts Act* Cap 10 provides that the Principal Magistrate's Court can only entertain matters where the value of the subject matter does not exceed Kshs. 10 million and therefore the Siakago court does not have the pecuniary jurisdiction to entertain the dispute.
  7. Further, that jurisdiction could only be conferred to a court by the statute and a court cannot expand its jurisdiction through judicial craft or innovation. The Respondent relied on *S. K Macharia v KCB Civil Application No 2 of 2012*, where the court held that a court's jurisdiction flows from either the *Constitution* or legislation or both and that a court of law could only exercise jurisdiction conferred by the *Constitution* or other written Law. That it cannot arrogate to itself jurisdiction exceeding that which was conferred upon it by law. That without jurisdiction, the court cannot entertain any proceedings.
  8. It was the Respondent's submission that there was nothing to be transferred in this case because the magistrates' court lacked the pecuniary jurisdiction and that the proceedings should therefore be struck out. The Respondent relied on *Owners of Motor Vessels "Lilian S" Vs Caltex Oil (Kenya) Ltd (1989)* eKLR where the court held that a court should down its tools in respect of the matter before it the moment it holds the opinion that it does not have jurisdiction.
  9. The Respondent went further to argue that since the Magistrates' Court lacked jurisdiction to entertain the suit, the proceedings before that court should be struck out because nothing prevents the Applicants from filing the same suit in a court with jurisdiction.
  10. The issue for determination is whether the court should transfer Siakago PM ELC Case No E037 of 2022 to this court for hearing and determination.
  11. The background to this matter is that the applicants filed the plaint dated 7/4/2022 in Principal Magistrate Court ELC Case No E037 of 2022 at Siakago seeking an order directing the Land Registrar, Mbeere South to remove the caution registered against Mbeere/ Wachoro/1688.
  12. During the hearing of the suit, it emerged that the value of the suit land was approximately Kshs 15 million. When this monetary value was mentioned to the court, Learned Magistrate directed that the Principal Magistrate it did not have pecuniary jurisdiction to move a step further and had to down its tools.
  13. The valuation report prepared by Rwingo Valuers gave the market value of the suit land as Kshs 55,335,000/=. The caution which formed the subject matter of the dispute in Siakago Principal Magistrate Court ELC Case No E037 of 2022 was premised on the sale agreement dated 7/10/2007 which gave the consideration for the sale of a portion of the land measuring 0.05 hectares as Kshs 280,000/=. According to the valuation report, the whole land measures 9.14 acres. The caution was placed against the whole parcel of land since there is no indication that the portion measuring 0.05 hectares which the Respondent purchased through the sale agreement dated 7/10/2007 was ever excised.



14. The Respondent's defence before the trial court was that the Applicants failed to disclose to the probate court that he was a purchaser for value of 0/05 ha of the suit land and that they instead distributed the gross intestate instead of the net intestate estate.
15. The value of the subject matter before the court is not Kshs. 55million, the suit seeks the removal of the caution registered against the suit land by the Respondent. The suit can be heard and determined by the Principal Magistrate Court at Siakago.
16. The court declines to grant the orders sought in the application dated 17/1/2025.
17. The orders made by the Learned Magistrate in Siakago PM ELC Case No E037 of 2022 to the effect that that court lacked jurisdiction to hear the dispute relating to the removal of the caution registered against the suit land are set aside.
18. The case is remitted back to the Siakago Principal Magistrate for hearing and disposal.  
Each party will bear its costs for the application.

**DELIVERED VIRTUALLY AT EMBU THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Ngigi Gichoya for the Applicants

Mr. Mugambi Njeru for the Respondent

Diana Kemboi- Court Assistant

