



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT MERU**

**ELC LAND CASE NO. E018 OF 2024**

**JOHNSON MBAABU MBURUGU. ....1ST**

**PLAINTIFF**

**CATHERINE GAKII MBAABU.....2ND**

**PLAINTIFF**

**=VERSUS=**

**ABDI ABDULLAHI.....**

**.....DEFENDANT**

**RULING (EX-TEMPORE)**

1. Through a notice of motion dated 20/5/2025, **M/s Word of Faith Church** seek: (i) an order joining them as an interested party in this suit; (ii) an order granting them leave to file pleadings in the suit upon joinder; and (iii) an order transferring **Tigania SPMC E & L Case No. E137 of 2023** and **Meru CMC E & L Case No. E065 of 2024** to Meru Environment and Land Court. The above

application was heard today and is the subject of this ruling.

2. The case of the applicant is that the subject matter in this suit is the same as the subject matter in Tigania SPMC E & L Case No. E137 of 2023. They are the plaintiff in Tigania SPMC E & L Case No. E137 of 2023. **Abdi Abdullahi** is the defendant in the said suit. **Johnson Mbaabu Mburugu** and **Catherine Gakii Mbaabu** are interested parties in the said suit. He adds that **Abdi Abdullahi** is the plaintiff in Meru CMC E & L Case No. E065 of 2024 while **Johnson Mbaabu Mburugu** and **Catherine Gakii Mbaabu** are the defendants in the said suit. The applicant contends that, in light of the fact that the disputes in the three cases relate to the same parcel of land and involve the same parties, the two suits should be transferred to Meru ELC and be consolidated with this suit, adding that the three suits should be heard together.
3. Johnson Mbaabu Mburugu and Catherine Gakii Mbaabu filed a replying affidavit sworn on 18/6/2025 by **Johnson Mbaabu**. At the hearing of the application, their advocate, Mr Myamu Nyaga, indicated that they were not opposed to the application except that the status of the applicant had to be clearly defined. They also pointed out in their affidavit that, vide a ruling rendered by this court on 20/1/2025 in **Meru ELC Misc Application No. E042 of 2024**, Meru CMC E & L Case

No. E065 of 2024 was transferred to this court and was subsequently consolidated with this suit.

4. Similarly, Abdi Abdullahi who was represented by **Mr. E. K. Mwangi** of **Arthur Ingutya & Co Advocates** did not oppose the application.
5. The court has considered the application. The two key questions to be answered in this ex-tempore ruling are: (i) Whether the criteria for joinder to a suit has been met; and (ii) Whether the application satisfies the criteria for transfer of a suit to one court for hearing by the court alongside another suit on the ground that the two or more suits involve the same subject matter, same parties and common issues. In the context of the present application, the two issues are intertwined. They will therefore be disposed contemporaneously.
6. **Order 1 rule 10(2)** of the **Civil Procedure Rules** provides the following framework on joinder:

***“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”***

7. The Court of Appeal outlined the relevant principle on joinder in **Central Kenya Ltd v Trust Bank Ltd & 4 others, Civil Appeal No. 222 of 1998** as follows:

***“The jurisdiction of the court under O.1 rule 10 (2) and O.vi rule 3 (1) of the Civil Procedure Rules, respectively is specific. The decision as to who to sue is essentially that of the plaintiff, and the court’s duty thereafter, is to consider the allegations made against the named defendants and if it considers that there are other parties who should have been joined or were improperly joined, give appropriate directions under Order 1 rule 10 (2) above.”***

8. In **JMK and MWM Misc Mombasa Civil Appeal No.15 of 2015**, the Court reiterated the above principle as follows:

***“Order 1 Rule (10) (2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or suo moto, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party.”***

9. On transfer of a suit from one court to another court of competent jurisdiction, the relevant jurisdictional framework is **Section 18** of the **Civil Procedure Act**. The relevant jurisprudential principle was outlined by Okello J in **Kampala HCCS No. 36 of 1995; David Kabungu v Zikarenga & 4 others** as follows:

***“Section 18(1)(b) 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 a relevant consideration. As a general rule, the court should not interfere unless the expenses 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 purpose of working injustice. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction... It is 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 expense, interest of justice and possibilities of undue hardship, and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused.”***

- 10.** It does emerge from the evidence before court that the subject matter in the three suits is land parcel number 3099 situated in Mbwa Adjudication Section. It does

also emerge that the applicant claims to own the suit land. So do the two plaintiffs and the defendant in this suit. The common issue for determination in the three suits is the question of ownership of the suit land. There is also evidence that the parties in the three suits are the same. What differs is their designation in the three suits.

- 11.** What also emerges from the evidence on record is that Meru CMC E & L Case No. E065 of 2024 was transferred to this court and has already been registered in the Environment and Land Court and consolidated with Meru ELC Land Case No. E018 of 2024.
- 12.** Given the above circumstances, this court is satisfied that the criteria for joinder and the criteria for transfer of a suit for the purpose of joint hearing alongside another suit by one court has been met. What is yet to be ascertained is the question as to why the three suits cannot be transferred to and heard by the nearest Magistrate Court.
- 13.** For the above reason, parties will appear before this court on a day to be appointed to address the court on why the three suits should not be heard by the nearest Magistrate Court. Parties will be expected to file and share brief affidavits setting out the legal basis for hearing of the three suits by the Environment and Land Court as opposed to the nearest Magistrate Court.

- 14.** In light of the foregoing, the applicant is hereby joined to Meru ELCL E018 of 2024 as a 2nd defendant. They will be at liberty to file their pleadings in the said suit.
- 15.** Whereas the plea for joint hearing of the three suits is merited, the question as to whether the cases should be heard by the Environment and Land Court or by the nearest Magistrate Court will await presentations by the parties.

**DATED, SIGNED AND DELIVERED AT MERU THIS 13TH DAY OF OCTOBER, 2025.**

**B M EBOSO [MR]  
ELC JUDGE**