



REPUBLIC OF KENYA



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**Ngugi & another v Fear & 4 others (Environment and Land
Case 437 of 2011 & Civil Suit 424 of 2011 & 1321 of 2005
(Consolidated)) [2025] KEELC 6995 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6995 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 437 OF 2011 & CIVIL
SUIT 424 OF 2011 & 1321 OF 2005 (CONSOLIDATED)**

JG KEMEI, J

OCTOBER 9, 2025

BETWEEN

**PIUS NGUGI 1ST PLAINTIFF
ANGELINE NGUGI 2ND PLAINTIFF**

AND

**HELEN FEAR 1ST DEFENDANT
MUKTAR SAMAN OLOW 2ND DEFENDANT
JOSPEH KIMANI T/A PYRAMID AUCTIONEERS 3RD DEFENDANT
CHIEF LAND REGISTRAR 4TH DEFENDANT
COMMISSIONER OF LANDS 5TH DEFENDANT**

RULING

(in respect to the Plaintiffs' application dated 7/4/2025)

1. Vide the application dated 7/4/25, the Plaintiffs/Applicants seek that the matters (this consolidated suit) be listed before the Presiding Judge of this Court to consider referring the matter to the Chief Justice to decide whether the hearing should proceed and be concluded before Mr Justice D M Mwangi.
2. The application is based on the grounds attached thereto and the supporting affidavit of the 1st Plaintiff/applicants sworn on 7/4/25.
3. The basis of the orders sought is that the hearing of the matter is at an advanced stage, as the Plaintiffs are about to close their case after calling seven witnesses, with only the 1st Plaintiff remaining to testify.



4. That the only remaining witness, the 1st Plaintiff, is elderly; therefore, continuing the matter before this court will cause delay and prejudice the parties.
5. It was averred that it is only fair for Mr. Justice D M Mwangi to hear the case to its conclusion, given that the learned judge has had the opportunity to observe the demeanour of the witnesses who have already testified. Consequently, it was averred that the judge is better placed to assess the evidence, considering the length of the trial.
6. That starting the case de novo will cause serious injustice to the parties involved in the suit.
7. The application is opposed by the 2nd Defendant, Muktar Saman Olow, who filed a Replying Affidavit sworn on 14/4/2025.
8. In the said Affidavit, the deponent stated that the application before the court is not merited and ought to be dismissed for being an abuse of the court process.
9. He argues that the Plaintiffs are trying to forum-shop and preselect the Judicial Officer to hear the case, which goes against the principles of impartiality, independence, and fairness in adjudication.
10. That the 1st Plaintiff has not demonstrated the connection between his illness and the Judge who should preside over the matter. He states that, in any event, the proceedings will be typed for ease of reference by the new judge. Therefore, there is no absolute reason why the matter should be referred to Mr. Justice M.D. Mwangi.
11. Regarding the evidence on record, the deponent states that the dispute herein relates to ownership of the suit property, whose determination shall be based on documentary evidence adduced by the parties.
12. The deponent referred to the provisions of Order 18 Rule 8 of the Civil Procedure (Amendment) Rules, 2020, which empowers the succeeding judge to proceed with the suit from where it was left by the predecessor in case any cause, including transfer, incapacitates the presiding judge.
13. He further averred that the application offends the overriding objectives of the court, which require that matters be heard expeditiously as well as the efficient use of judicial resources.
14. It is further argued that the Plaintiffs have not shown that the successor judge will be unable to assess the evidence and continue with the hearing.
15. Regarding the argument that the successor judge will not have the opportunity to observe the demeanour of witnesses who have already testified, the deponent maintains that this is not a sufficient reason to warrant the transfer. He also states that the Plaintiffs have had over 14 years to prosecute the matter, and therefore, their advanced age and poor health cannot be used to override the procedural integrity of the trial.
16. The deponent states that the 2nd Defendant will indeed be prejudiced, as the transfer will cause further delay in resolving the matter. Therefore, in the interest of justice, the successor judge should proceed with the hearing from where it was left. The court was urged to dismiss the application with costs
17. On 5/6/25, the parties respectively highlighted their submissions, which I have considered alongside the written submissions filed on 5/6/25 and 4/6/25 by the Plaintiff and the 2nd Defendant.

Analysis and determination

18. Having considered the application, the rival affidavit evidence together with the submissions, the key issue for determination is whether the application is merited.



19. It is commonly acknowledged that the issue before the court is a property ownership dispute. This matter has been pending for nearly two decades, but the hearing only commenced in 2022.
20. According to the record, it is not disputed that the matter was being heard before Mr Justice D M Mwangi, who took the evidence of seven witnesses from the Plaintiffs' side. It is also not disputed that Mr Justice D M Mwangi was transferred from Nairobi to Kajiado, therefore, he is not in a position to complete the hearing of this matter in Nairobi.
21. The Plaintiffs' case is that the file should be placed before the Presiding Judge (PJ) ELC to consider referring the matter to the Hon The Chief Justice to decide whether the parties are to conclude the hearing before the previous Learned Judge.
22. The application has been brought under the provisions of Section 63 (e) of the CPA, which empowers the court to issue orders to prevent the ends of justice from being defeated.
23. What happens to part-heard matters when a judge is transferred? Order 18 Rule 8(1) of the Civil Procedure Rules provides for the procedure to be followed where a matter is part-heard. It provides as follows:
 - “(1) Where a judge is prevented by death, transfer, or other cause from concluding the trial of a suit or the hearing of any application, his successor may deal with any evidence taken down under the foregoing rules as if such evidence had been taken down by him or under his direction under the said rules, and may proceed with the suit or application from the stage at which his predecessor left it.”
24. The above-cited procedural law contemplates a judge's transfer. When handling a part-heard case, a judge has two options: to accept the evidence collected by their predecessor as if they had taken it themselves or under their instructions, and to continue with the case. With the parties' consent, this may include writing the judgment or ruling based on the existing record if the hearing has been completed. The aim of this rule is to prevent injustice in situations where the previous judge cannot deliver the judgment due to death or other incapacity. Alternatively, the judge may hear the matter afresh (de novo) or resume from where the predecessor left off.
25. As stated in the case of *Bifwoli –vs- AG & 3 Others (2023) eKLR*, this rule gives a judge taking over a part-heard case from a judge who has been transferred the discretion to proceed with the hearing of the case from where his predecessor left it. The Court stated that;
 - “.... As a general rule, this is what normally happens, and for good reason. When a judge is transferred to another court station, he is supposed to attend to the matters at his new station without any distraction. In most cases, the judge will not only get new matters at his new station but will also get part-heard matters left by his predecessor at that station. He will therefore be dealing with both new cases and part-heard cases. Once a judge leaves a station, he is not supposed to be unduly summoned back to that station to deal with ordinary matters that were part-heard before him as his successor is supposed to deal with the same.
26. The Learned Judge went ahead to add that ;
 - “If that was not the case, judges who have been transferred would not be able to concentrate fully at their new stations as they would divide their time between their old and new stations.



These judges would also require facilitation to go back to their old stations. This is an added cost to the strained court resources. The unencumbered back-and-forth shuttling of judges would in the end not achieve the overriding objective of the *Civil Procedure Act* in that it would compromise efficiency, prudent use of resources and service delivery in the judiciary in general. This in my view is what Order 18 Rule 8(1) of the Civil Procedure Rules was supposed to take care of.

27. In this case, I have reviewed the file, which shows that the Plaintiffs' witnesses have testified with the exception of the 1st Plaintiff who is yet to testify. Likewise, there are five defendants whose witnesses have not yet adduced evidence. Therefore, in my view, I am unable to agree with the applicants that the hearing of the matter is at an advanced stage, more so, as the main witness is yet to take the stand.
28. Order 18 Rule 7 of the Civil Procedure Rules (CPR) states that the court may record remarks it considers pertinent regarding a witness's demeanour during examination. The Plaintiff has argued that the new judge has not had the opportunity to observe the witnesses testify or to assess their demeanour. That may be so. However, it is trite that, unlike in criminal cases, recording comments on the demeanour of a witness in civil cases is discretionary. In my view, if any material regarding a witness's demeanour was relevant, it is expected that it will form part of the record in accordance with the provisions of Order 18 Rule 7 of the CPR.
29. Paragraph 32 of the Practice Directions on Standardization of Practice & Procedures in the Environment and Land Court, 2025 states that;
 - a. A Case Management System shall be deployed and implemented to deal with part-heard matters.
 - b. Where a Judge is transferred, pending matters shall be brought up for mention before the Presiding Judge for directions.
 - c. A list of pending part-heard matters shall be sent to the Principal Judge of the Court upon transfer of a Judge.
30. Practice directions aim to standardise and improve access to justice by providing uniform procedures, promoting efficiency, and clarifying how courts should operate. They supplement existing procedural rules, allowing for adaptability to changing needs in the administration of justice. Having considered the said practice directions, it would seem that they are intended to allow the head of court to administratively monitor part-heard matters to ensure that no lapse occurs arising from the transfer of judges. These practice directions, in my view, cannot assist the applicants in this application.
31. I agree with the applicants that this court should be guided by Articles 10, 50, and 159 of *the Constitution*, Sections 1A and 1B of the *Civil Procedure Act* and the Rules thereunder, and Section 3 of the *Environment and Land Court Act* No. 19, 2011 and the Rules thereunder, in order to facilitate a fair, just, expeditious, proportionate, and accessible resolution of disputes.
32. Further Section 1A and 1B of the *Civil Procedure Act* provide for overriding objectives of the *Civil Procedure Act* and state as follows:
 - 1A (1) "The overriding objective of this Act and the Rules made thereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the Civil disputes governed by the Act.
 - (2) The court shall, in exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in Sub-section (1).



- (3) A party to Civil Proceedings or an Advocate for such party is under a duty to assist the court to further the overriding objective of the Act and to that effect, to participate in the process of the court and to comply with the directions and orders of the court.
- 1B. Duty of Court
- a. For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims— The just determination of the proceedings; The efficient disposal of the business of the court; The efficient use of the available judicial and administrative resources; The timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the respective parties and, the use of suitable technology.”
33. The *Environment and Land Court Act*, 2011 also provides at Section 3 (1) for overriding objectives. The Act provides that the principal objective of this Act is to enable the Court to facilitate the just, expeditious, proportionate, and accessible resolution of disputes governed thereunder.
34. In carrying out its constitutional duty, the court must keep in mind the overriding objective of the court. In the case of *Madison Insurance Company Limited v. David Wambua, Jackson Mulinge Maingi & Another (Interested Party)* [2021 eKLR], the court approved the holding of Lord Woolf in *Swain v. Hillman* [200], 1 All ER 91.
- “It saves expenses; it achieves expedition; it avoids the court’s resources being used up on cases where this serves no purpose, and, I would add, generally, that it is in the interests of justice.”
35. The main goal of the overriding objective principle is to help the court achieve a fair, just, quick, and proportionate resolution of cases with minimal time and expense. Transferring the file to Kajiado for hearing introduces many difficulties because the judge already has a cause list that calls for his focus. If judges were to be recalled to their stations whenever a party requests, it would lead to confusion, delays, and disrupt the court’s proceedings.
36. For the reasons outlined above, I am of the view that the prayers sought in the application do not promote the overriding objectives of a swift and proportionate resolution of this dispute. In my view, the age of the suit and the health status of the 1st Plaintiff, as averred, highlight the need to resolve the suit expeditiously. Regarding the claim that parties would be prejudiced if proceedings continue or restart before this Court, the practice is that proceedings are typed, and the Court will adopt the proceedings on record as though they were prepared by it.
37. Ultimately, I find there are no grounds for this court to list the file before the head of the court as suggested by the applicants.
38. Final orders for disposal
- a. For those reasons, and in accordance with the provisions of Sections 1A, 1B and 3A of the *Civil Procedure Act*, Section 3 of the *Environment and Land Court Act*, 2011, as well as Article 159(2) (d) & (e) of *the Constitution*, with respect to fair, expeditious, proportionate, and accessible resolution of disputes, I decline to issue the orders sought.
- b. The application is therefore dismissed with costs to the 2nd Respondent.
- c. I direct the parties to fix a date for directions under Order 18 Rule 8 of the Civil Procedure Rules and thereafter fix the matter for hearing on priority basis.



DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9TH DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

1. Mr Kimani Kiragu SC together with Mr Kulula, for the Applicants
2. N/A for the 1st Respondent
3. Mr Cohen Amany HB for Mr Ahmed Nassir SC for the 2nd Respondent
4. N/A for the 3rd -5th Respondents
5. C/A – Ms Yvette Njoroge

