



**Mburugu & another v Abdullahi (Environment and Land Miscellaneous Application E042 of 2024) [2025] KEELC 49 (KLR) (20 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 49 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E042 OF 2024**  
**BM EBOSO, J**  
**JANUARY 20, 2025**

**BETWEEN**

**JOHNSON MBAABU MBURUGU ..... 1<sup>ST</sup> APPLICANT**

**CATHERINE GAKII MBAABU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**ABDI ABDULLAHI ..... RESPONDENT**

**RULING**

1. Through the Notice of Motion dated 15/10/2024, Johnson Mbaabu Mburugu and Catherine Gakii Mbaabu (“referred to in this ruling as the applicants”) seek an order transferring Meru Chief Magistrate Court E & L Case No. E065 of 2024 from the said subordinate court to this Court for hearing and determination. They also pray that upon transfer, the said suit be consolidated with Meru ELC Case No. E018 of 2024 and the two cases be heard together. The said application was heard today and is the subject of this ex-tempore ruling.
2. The case of the applicants is that, the two suits relate to the same subject matter and involve the same parties. They contend that subsequent to them serving the respondent with suit papers relating to Meru ELC Case No. E018 of 2024, the respondent served them with papers relating to Meru Chief Magistrate Court E&L Case No. E065 of 2024. They further contend that if the two parallel suits are left to proceed to trial separately in different courts, there is a likelihood of the two courts rendering conflicting judgments in the two suits. They urge the court to grant the orders sought.
3. The respondent opposed the application through grounds of opposition dated 13/11/2024 and written submissions dated 13/12/2024. The case of the respondent is that this cause is subjudice. He further contends that the Chief Magistrate Court has competent jurisdiction to try all issues at hand, hence the transfer order should not be granted.



4. The court has considered the application, the response to the application, and the parties' respective submissions. The three key issues that fall for determination in the application are; (i) Whether this suit is subjudice; (ii) Whether the application satisfies the criteria for transfer of a suit on the basis of same subject matter, same parties, and commonality of issues; and (iii) Whether, at this point, the order of consolidation is available.
5. Is this suit subjudice? In his grounds of opposition dated 13/11/2024, the respondent contended thus:
  - “ 1. The application is misconceived the suit filed herein being subjudice a similar suit filed before the Chief Magistrate”
6. No evidence was tendered by the respondent to demonstrate that a similar application seeking similar orders subsisted in the Chief Magistrate. Secondly, even if a similar miscellaneous application subsisted in the Chief Magistrate Court, I do not think the Chief Magistrate Court has jurisdiction to entertain a plea for transfer of a civil suit from one Magistrate Court to any other court. Section 18 of the *Civil Procedure Act* vests the above jurisdiction in the thirddtier superior courts. Consequently, my finding on the first issue is that the present miscellaneous application which seeks transfer of Meru Magistrate Court E & L Case no. E065 of 2024 is not subjudice.
7. Does the application satisfy the criteria for transfer of a suit on the ground of same subject matter, same parties, and commonality of issues? The applicants contended through their supporting affidavit that the subject matter in the two suits is the same, to wit, land parcel number 3099 situated in Mbwaa 1 Adjudication Area in Tigania West Sub County. They also contend that parties in the two suits are the same. A look at the materials presented to the court indicate that the issue of ownership of the suit land is a common question that falls for determination in the two parallel suits.
8. It is observed from the court record that the respondent elected not to challenge the application through affidavit evidence. Consequently, as things stand, the affidavit evidence that was presented by the applicants remains unchallenged. In the circumstances, the court finds that the application satisfies the test of same subject matter, same parties and commonality of issues.
9. Is the order for consolidation available at this point? At this stage, the two suits are still in different courts. The two suits cannot be consolidated until one of them is transferred and registered in the court where the other suit subsists. For the above reason, grant of an order of consolidation at this point would be premature. The plea for a consolidation order should be renewed after transfer and registration of the transferred suit.
10. Lastly, in opposing the application, the respondent contended in their submissions that the applicants filed Meru ELC Case No. E018 of 2024 during the subsistence of Meru Chief Magistrate Court E&L Case No. E065 of 2024. He did not, however, file a replying affidavit to demonstrate to the court that his suit was the first to be filed and that the applicants were aware of subsistence of his suit at the time they initiated Meru ELC Case No. E018 of 2024.
11. On their part, the applicants contended, through an affidavit, that they served the respondent with court papers relating to Meru ELC Case No. E018 of 2024 on 15/8/2024 having filed the suit on 30/7/2024. They further contended that on 18/9/2024, the respondent served them with papers relating to Meru Chief Magistrate Court E&L Case No. E065 of 2024. Suffice it to state, it is not clear from the materials before court, which suit was filed first.
12. The respondent further contended that this court should reject the plaintiffs' application and instead transfer Meru ELC Case No. E018 of 2024 to the Chief Magistrate Court. At this point, no formal application has been made to this Court to make an order of that nature. The only formal plea which



the Court is seized of is the present application, seeking transfer of Meru Chief Magistrate Court E&L Case No. E065 of 2024 to this Court.

13. For the above reasons, the court finds merit in the first limb of the application dated 15/10/2024. Consequently, the application is allowed in terms of prayer 2.
14. Taking into account the circumstances of the application, parties will bear their respective costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MERU THIS 20TH DAY OF JANUARY, 2025**

**B M EBOSO (MR)**

**JUDGE**

**In the Presence of:**

Mr. Mwangi for the Respondent

No appearance for the Applicant

Court Assistant –

