

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

MISC, CIVIL APPLICATION NO. E013 OF 2025

**DAVID WAMOTO KIMACHAS-----1ST
APPLICANT**

**ELLY KIBET-----2ND
APPLICANT**

VERSUS

**ALICE CHEMTAI KIMACHAS-----
RESPONDENT**

RULING

1. The Applicants, vide a Notice of Motion application brought under certificate of urgency dated 26/05/2025 seek the following orders;
 - (1) (SPENT)
 - (2) THAT pending the *interparties* hearing of this Application, this Honourable Court be pleased to stay the proceedings in BUNGOMA MCELC/E047/2025
 - (3) THAT BUNGOMA MCELC/047/2025 be transferred to the Chief Magistrate’s Court, Environment & Land Court at SIRISIA for disposal on merits.
 - (4) THAT Costs be provided for.
2. The application is based on grounds apparent on the face of the said application and the supporting affidavit of Elly Kibet sworn on even date. According to the Applicants, they reside and work for gain within Malakisi/Sirisia area where the cause of action arose and where the suit property is

situated. They contend that the cause of action arose in SIRISIA area just a few kilometers away from SIRISIA LAW COURTS. They annexed a copy of the title deed and certificate of official search as 'EK2'

3. The Applicants also contend that the Respondent at paragraph 4 and 9 of the plaint in BUNGOMA MC-ELC NO. E47 averred that he resides on the suit property which is located in MALAKISI/SIRISIA area and at paragraph 11 of his supporting affidavit, he deposed that she made a report regarding the dispute herein at CHESIKAKI POLICE STATION which is located in SIRISIA area. They argued that the Respondent is forum shopping by filing the suit in a court outside the jurisdiction of the suit property.
4. The Respondent filed a Replying affidavit in opposition to the said application sworn on 9th July 2025 and stated that SIRISIA MAGISTRATES COURT lacks the requisite pecuniary jurisdiction to hear and determine the dispute as the highest ranking Magistrate is a Principal Magistrate. She stated that the subject matter of the suit herein involves a claim whose monetary value exceeds the pecuniary jurisdiction prescribed for the proposed Court under section 7 of the Magistrates Courts Act, 2015.
5. The Respondent further deposed that the value of the property in question being N.MALAKISI/W.SASURI/1518 is approximately KSHS. 14,800,000/= which is above the requisite monetary value of KSHS. 10,000,000/= that is

handled by the Hon. Principal Magistrate in SIRISIA. She annexed a copy of a valuation report as 'ACK-1'

6. The Respondent also stated that despite purporting that Section 15(a) and (b) of the CPR gives the court territorial jurisdiction to handle the matter, the said provision cannot override or cure a lack of pecuniary jurisdiction as pecuniary jurisdiction must be concurrent both in subject matter, territorial scope and pecuniary value. She stated that the argument that the proposed court is the nearest court to the Applicant is not tenable since the issue of proximity cannot be used to confer jurisdiction where pecuniary jurisdiction does not exist.
7. In conclusion, the Respondent contends that her opposition to the application is solely premised on the clear legal position that the proposed court lacks jurisdiction and not motivated by any intention to engage in forum shopping or gain an undue procedural advantage.
8. I have considered the application, the supporting affidavit, the Replying affidavit, the annexures thereto, the submissions by the Applicant and the applicable law. The application under review seeks to transfer BUNGOMA CM-ELC Case NO. E047 of 2025 to SIRISIA Law Courts for hearing and determination. The reasons for the transfer is that the subject matter of the dispute is land parcel NO. N.MALAKISI/W.SASURI/1518 whose monetary value exceeds the financial limits prescribed under section 7 of the

Magistrates Court Act, 2015 for the proposed court and that the dispute cannot therefore be lawfully adjudicated upon by that court.

9. Section 7 of the Magistrates' Court provides as follows;

- “(1) A Magistrates' Court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed-;
- (a) Twenty million shillings, where the court is presided over by a Chief Magistrate;
 - (b) Fifteen million shillings, where the court is presided over by a Senior Principal Magistrate;
 - (c) Ten million shillings, where the court is presided over by a Principal Magistrate;
 - (d) Seven million shillings, where the court is presided over by a Senior Resident Magistrate; or
 - (e) Five million shillings, where the court is presided over by a Resident Magistrate”

10. The Respondent's opposition to the said application is on one ground that the Sirisia Magistrate court which is the nearest court to the suit land is presided over by a Principal Magistrate whose pecuniary jurisdiction is ten million shillings while the land forming the subject matter of the dispute involves a claim whose monetary value exceeds the financial limits prescribed under Section 7 of the Magistrates' Courts Act, 2015 for the proposed court.

11. It is common knowledge that SIRISIA Law Court is presided over by Hon. Langat who is a Senior Principal Magistrate whose pecuniary jurisdiction is fifteen million shillings (KSHS 15,000,000/). From the valuation report annexed by the Respondent to her replying affidavit, it is clear that the said Hon. Langat who is also the Head of Station is seized with the requisite pecuniary jurisdiction to hear and determine the suit filed before the Chief Magistrates' Court at Bungoma being BUNGOMA CM-ELC NO. E047 of 2025. In view of the foregoing, I find the Notice of Motion application dated 26th day of May, 2025 merited and the same is hereby allowed in the following terms;
1. Bungoma CM-ELC NO. E047 of 2025 be and is hereby transferred to SIRISIA Senior Principals' Court for hearing and determination.
 2. THAT the matter to be mentioned for directions before the Senior Principal Magistrate on 5th November, 2025.
 3. THAT the Costs of this application to be costs in the cause.

READ, DATED and **SIGNED** at **BUNGOMA** this 16th day of October, 2025

HON. E.C CHERONO
ELC JUDGE

In the presence of;

1. M/S Nekesa for the Respondent.
2. Applicant/Advocate-absent.
3. Bett C/A.