



Tanui v Sitienei & another (Environment and Land Miscellaneous Application E030 of 2025) [2025] KEELC 7609 (KLR) (4 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7609 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E030 OF 2025
GMA ONGONDO, J
NOVEMBER 4, 2025**

BETWEEN

EMILY CHEROTICH TANUI APPLICANT

AND

JOSEPH KIPRONO SITIENEI 1ST RESPONDENT

BENJAMIN KIPTARUS KEMBOI 2ND RESPONDENT

RULING

1. The applicant, Emily Cherotich Tanui through Cherono Jepkosgey and Company Advocates commenced an application by way of a Notice of Motion dated 21st October 2025 under, inter alia, sections 1A, 1B, 3, 3A and 15 of the *Civil Procedure Act* Chapter 21 Laws of Kenya (The CPA herein), seeking the following orders;
 - a. Spent.
 - b. That Kibiyet CMELC No. E006 of 2025 *Emily Cherotich Sitienei v Joseph Kiprono Sitienei and Benjamin Kiptatus Kemboi* be transferred to the Chief Magistrate’s Court at Kapsabet for hearing and final determination.
 - c. That upon grant of prayer (2) above, this Honourable Court be pleased to have the matter mentioned before the Chief Magistrates Court at Kapsabet before the lapse of 30 days for purposes of directions.
 - d. That costs be in the cause.
2. The application is founded upon the supporting affidavit of twelve paragraphs sworn on even date by Eliseba Jepkosgey Koech learned Counsel for the Applicant as well as copies of the accompanying documents inclusive of the plaint dated 23rd July 2025 in Kibiyet Magistrate’s Court Land Case No. E006 of 2025, the Defendants’ preliminary objection dated 5th September 2025 and ruling delivered



on 16th October 2025 therein marked as ‘EJK1b, EJK2 and EJK3a’ respectively. Also, the application is based on nine grounds which include;

- a) That the Applicant herein filed a suit as against the Respondents vide Kabiyet CMELC No. E006 of 2025, *Emily Cherotich Tanui v Joseph Kiprono Sitienei And Benjamin Kiptarus Kemboi*.
 - b) That, the Applicant was under the impression that Nandi/Kokwet/1896 located within Mosoriot falls within the territorial jurisdiction of Kabiyet Law Courts.
 - c) The 2nd Respondent raised a Notice of Preliminary Objection dated 5th September, 2025 citing lack of territorial jurisdiction of Kabiyet Law Courts.
 - d) That on 16th October, 2025 the Honourable Court delivered its ruling allowing the notice of preliminary objection, and ordered that the Applicant makes the necessary applications for transfer with the interim orders in force existing to remain in force for 30 days.
3. The 1st Respondent, Joseph Kiprono Sitienei who appears in person, did not oppose the application.
4. The 2nd Respondent through Kipkorir, Cheruiyot, Chivai & Kigen Advocates LLP, opposed the application by way of a replying affidavit of sixteen paragraphs sworn on 31st October 2025 and urged the Court to dismiss it in the interest of justice. He averred in part;
- a) That, from the onset, the application is misconstrued, frivolous, vexatious, an abuse of the Court Process and devoid of merit.
 - b) That the historical background as given in the application is not contested
 - c) That the suit the Applicant seeks to have it transferred was filed before a Court that does not have jurisdiction and therefore every order and direction given by the said Court in Kabiyet is null and void as the Court did not have authority.
 - d) That the suit filed at Kabiyet Law Courts is incompetent and a nullity and there is nothing to be transferred.
5. On 3rd November 2025, the Court heard the application by way of oral submissions pursuant to request by counsel for the respective parties and Order 51 Rule 16 of the [Civil Procedure Rules 2010](#).
6. Ms. Eliseba Koech learned Counsel for the Applicant urged that Kabiyet Magistrates’ Court which delivered its ruling on 16th October 2015 annexed to the application, has jurisdiction to render justice within Nandi County. That the present application is not an appeal from that ruling. That the preliminary objection was made in bad faith and to ensure that justice is derailed hence, the application be allowed.
7. Ms. Aketch learned Counsel for the 2nd Respondent submitted that the application is opposed as per the Replying Affidavit. That jurisdiction is everything and the ruling by Kabiyet Magistrate’s Court is null and void for want of jurisdiction. That the application is based on non-existent suit further to the Court’s ruling. That this Court cannot be used to regularise the suit and implored the Court to dismiss the application.
8. In the foregone, the issues for determination are whether there is merit in the application and the appropriate orders to issue for the ends of justice.
9. I consider the entire application including the provisions of the law under which it was commenced for transfer of the suit. Sections 12 to 18 of the [CPA](#) relate to the place of suing and transfer of suits.



10. The 2nd Respondent opposed the application on the basis that Kabiyet Magistrates' Court has no jurisdiction over the suit. I bear in mind Sections 7 and 9 of the Magistrates' Courts Act No. 26 of 2015 on civil jurisdiction and claims in Land and Environment cases pertaining to the Magistrates' Courts.
11. It is trite law that lack of jurisdiction renders a Court's jurisdiction void; see Republic v Karisa Chengo & 2 others (2017) eKLR.
12. Besides, it must be noted that Kabiyet Magistrates' Court was established by Kenya Gazette Notice No. 10179 of 4th December 2020 with effect from 16th November 2020 under the CPA. Sections 59 and 60 of the Evidence Act Chapter 80 laws of Kenya are in regard to facts that do not require proof in Court and facts which the Court shall take judicial notice including geographical boundaries respectively.
13. Notably, the 2nd Defendant is a resident of Chepterit as discerned in paragraph 3 of the plaint which originated the suit at Kabiyet Magistrate's Court. The subject matter of the suit, Nandi/Kokwet/1896 is located in Mosoriot within the jurisdiction of the both Kabiyet as discerned in paragraph 13 hereinabove and Kapsabet Chief Magistrates' Courts. However, due to the location of the suit land and that the 2nd Respondent resides at Chepterit which is closer to Kapsabet than Kabiyet, the suit shall be heard and determined before Kapsabet Chief Magistrates' Court in light of sections 3 and 3A (supra) as well as section 3 of the Environment and Land Court Act 2015 (2011) and in the spirit of access to justice as enshrined in Article 48 of the Constitution of Kenya 2010.
14. Moreover, the parties herein have the unlimited right to be heard in the suit under Article 50 (1) as read with Article 25 (c) of the Constitution of Kenya 2010; see also James Kanyiita Nderitu & another v Marios Philotas Ghikas & another (2016) eKLR that the right to be heard is fundamental and permeates our entire justice system.
15. Under Order 6 Rule 13 of the Civil Procedure Rules 2010, the Court has the discretion to strike out or order amendment of any pleadings. Further, I subscribe to the Court of Appeal decision in the case of D.T Dobie & Company (Kenya) Ltd v Muchina {1980} KECA 3 (KLR) that no suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment.
16. Plainly, the suit pending at Kabiyet Magistrate's Court discloses a cause of action and it is neither hopeless nor weak to be struck out or dismissed.
17. It is therefore, my considered view that the application is partially unopposed as disclosed in paragraphs 3 and 5 (b) hereinabove, cogent and meritorious.
18. Wherefore, the application dated 21st October 2025 is hereby allowed in terms of prayers 2, 3 and 4 therein as set out in paragraph 1 (b) (c) and (d) hereinabove.
19. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 4TH DAY OF NOVEMBER 2025

HON G M A ONGONDO,

JUDGE

In the presence of;

Ms. Eliseba Koech learned Counsel for the Applicant

The 1st Respondent in person

Ms. Faith Aketch learned Counsel for the 2nd Respondent



Walter, Court Assistant

