



**Bamaftah & another v Cabinet Secretary, Ministry of Lands, Public Works,
Housing and Urban Development & 7 others (Environment and Planning Civil
Case E004 of 2024) [2025] KEELC 8616 (KLR) (10 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8616 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND PLANNING CIVIL CASE E004 OF 2024
SM KIBUNJA, J
DECEMBER 10, 2025**

BETWEEN

FARID FARAJ AWADH BAMAFTAH 1ST PLAINTIFF

AL MAHRA INDUSTRIES LIMITED 2ND PLAINTIFF

AND

**THE CABINET SECRETARY, MINISTRY OF LANDS, PUBLIC WORKS,
HOUSING AND URBAN DEVELOPMENT 1ST DEFENDANT**

**PRINCIPAL SECRETARY, STATE DEPARTMENT FOR LANDS AND
PHYSICAL PLANNING 2ND DEFENDANT**

CHIEF LAND REGISTRAR 3RD DEFENDANT

THE LAND REGISTRAR, KILIFI COUNTY 4TH DEFENDANT

**THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICE, KILIFI
COUNTY 5TH DEFENDANT**

THE DIRECTOR OF SURVEYS 6TH DEFENDANT

THE NATIONAL LAND COMMISSION 7TH DEFENDANT

THE HON ATTORNEY GENERAL 8TH DEFENDANT

RULING

1. Vide the notice of motion dated the 17th June 2025, the 1st to 6th & 8th defendants through the Attorney General sought for the transfer of this suit to ELC Malindi for hearing and determination, and relied on the six (6) ground on its face marked (1) to (6) respectively. the application is supported by the affidavits of Janet Langat, advocate on record for the parties who is working as a state counsel, sworn on 17th June



2025 and 30th September 2025 inter alia deposing that this suit and Malindi ELC petition No. E001 of 2024, Kabibi Karisa Charo & 7 Others versus NLC & 5 Others and Malindi ELC petition No. E020 of 2023, Stephen Kahindi Charo & 9 Others versus Ministry of Lands & Others have the same cause of action arising from the same suit property, namely MN/111/324 and 334, and it is only fair and just for this suit to be transferred to ELC Malindi to be heard with the other two. That the plaintiffs' herein have at paragraph 16 of their plaint averred that their parcel of land subject matter of this suit was carved out of parcel No. 527 which arose after parcel No. MN/111/324 and 334 measuring 164 acres were amalgamated and subdivided into parcels 515 to 527. That the two suits before ELC Malindi are challenging the legality of subdivisions MN/111/324 and 334 and the subsequent allocations to third parties and hence the need to transfer this suit to that court.

2. The plaintiffs opposed the application through the replying affidavits of Farid Faraj Awadh Bamaftah, 1st plaintiff, and Abdulrasul Swaleh Mohsin, a director with 2nd plaintiff, both sworn on the 12th September 2025, inter alia deposing that the property described by the 1st to 6th & 8th defendants in their application is different from the suit property herein; that the suit property in the petitions at ELC Malindi are MN/111/324 & 334 while in this suit the property is Subdivision No. 4730 (original No. 527/2) section 111, Mainland North, Mtwapa, Kilifi, CR.No. 38340; that the applicants have not met the threshold for transfer and consolidation of the suits as the parties and subject matter are different; that the suit property herein is within the jurisdictions of both this court and ELC Malindi; that the Malindi matters have been partly heard and it will be impossible to consolidate this suit to them without causing confusion, delay and prejudice to the parties.
3. The learned counsel for the 1st to 6th & 8th defendants and plaintiffs filed their submissions dated the 2nd October 2025 and 28th August 2025 respectively, which the court has considered.
4. The issues that arise from the grounds on the application, affidavit evidence and submissions by the learned counsel for the court's determinations are as follows:
 - a. Whether the subject matter in this suit is similar to that in the two petitions at ELC Malindi.
 - b. Whether this suit should be transferred to ELC Malindi to avoid the risk of courts with concurrent jurisdiction arriving at different decisions over the same subject matter.
 - c. Who pays the costs?
5. The court has carefully considered the grounds on the notice of motion, affidavit evidence, submissions by the learned counsel, superior court decisions cited thereon, and come to the following findings:
 - a. Section 12 of the *Civil Procedure Act* chapter 21 of Laws of Kenya provides as follows:
 - “ 12. Subject to the pecuniary or other limitations prescribed by any law, suits-
 - a. for the recovery of immovable property, with or without rent or profits;
 - b. for the partition of immovable property;
 - c. for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
 - d. for the determination of any other right to or interest in immovable property;



- e. for compensation for wrong to immovable property;
- f. for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:

Provided that the suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.”[underlining mine].

- b. The learned counsel for the 1st to 6th & 8th defendants has deposed and submitted that the suit properties herein are similar to the suit properties in the two petitions pending before ELC Malindi being Malindi ELC petition No. E001 of 2024, Kabibi Karisa Charo & 7 Others versus NLC & 5 Others and Malindi ELC petition No. E020 of 2023, Stephen Kahindi Charo & 9 Others versus Ministry of Lands & Others. On their part the plaintiffs have in their depositions denied that the suit property herein is similar to those in the two Malindi petitions, and their learned counsel has submitted inter alia that while it is not disputed that the suit properties herein were carved out of the resulting parcels MN/111/324 and 334, those parcels cease to exist upon subsequent subdivision/amalgamation.
 - c. From the pleadings by the plaintiffs on the plaint, the parties’ depositions and submissions by the learned counsel, for and against the application it is clear the suit properties in this suit are traceable in ancestry to MN/111.324 & 334, which are the subject matters in Malindi ELC petition No. E001 of 2024, Kabibi Karisa Charo & 7 Others versus NLC & 5 Others and Malindi ELC petition No. E020 of 2023, Stephen Kahindi Charo & 9 Others versus Ministry of Lands & Others. From the applicants’ deposition especially through the further affidavit sworn on 30th September 2025, the legality of subdivisions MN/111/324 and 334 and the subsequent allocations of the parcels arising therefrom to third parties is being challenged under the two petitions. The fact that the subject matter/suit property in this suit is apparently an offshoot of or related to MN/111/324 & 334, which are the suit properties/subject matter in the two Malindi petitions sways the court in favour of granting the prayer for transfer to avoid a scenario where the two courts arriving at different decisions over the legality of the title to and ownership of the same land or parts thereof.
 - d. The applicants have emerged successful in their application and would ordinarily have been entitled too costs under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, unless otherwise directed for good cause. That notwithstanding, I find it fair and just to order that costs abide the outcome of the suit, as the applicants are all public offices.
6. In view of the foregoing conclusions on the notice of motion dated the 17th June 2025, the court finds and orders as follows:
- a. That the application has merit and is allowed in terms of prayer (1). Accordingly, this suit is hereby transferred to ELC Malindi for hearing and determination.
 - b. The costs in the application to abide the outcome of the suit.



It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 10TH DAY OF DECEMBER 2025.

S. M. Kibunja, J.

ELC MOMBASA.

In The Presence Of:

Plaintiffs : M/s Amina

Defendants : Mr Kemei for Langat for 1st to 6th and 8th Defendants

M/s Magdalene for 7th Defendant

Kelekye-court Assistant.

S. M. Kibunja, J.

ELC MOMBASA.

