



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELCL MISC APPLICATION NO. E013 OF 2025

MARY ANN GATAKAA.....
.....APPLICANT

=VERSUS=

IDAH KANGAI MBAABU.....1ST
RESPONDENT

JACKLINE WANJA.....2ND
RESPONDENT

RULING

- 1.** Falling for determination in this ruling is the notice of motion dated 16/7/2025, brought by **Mary Ann Gatakaa** (*the applicant*). Through it, the applicant seeks an order transferring **Chuka CMC E & L Case No 274 of 2018** to this court for hearing and determination.
- 2.** The application is premised on the grounds set out in the motion and in the applicant's supporting affidavit dated 16/7/2025. It was canvassed through brief oral submissions

tendered in the virtual court by the applicant's advocate, **Mr. I.C Mugo**. The case of the applicant is that the respondents sued her in **Chuka CMC E & L Case No 274 of 2018**, seeking an order decreeing her to immediately and unconditionally vacate land parcel number **Karingani/Ndagani/3644**. She contested the claim through a statement of defence and counterclaim dated 11/1/2018 in which she pleaded the defence of adverse possession and prayed for orders of adverse possession against respondents.

3. The applicant adds that, vide a judgment (sic) rendered by the subordinate court on 22/5/2025, the subordinate court stayed the proceedings for 120 days to enable her procure a transfer order from the **Environment and Land Court** because the subordinate court lacked jurisdiction to adjudicate the defence and counterclaim of adverse possession. It is against the above background that on 16/7/2025, she filed the above application seeking a transfer order. She urges this court to grant her the order.
4. The respondents opposed the application through a replying affidavit sworn on 26/11/2025 by **Idah Kangai Mbaabu** and through brief oral submissions tendered in the virtual court by **Ms Ocholla** of **Ojwang Sombe & Co Advocates**. The case of the respondents is that, through the Judgment dated 22/5/2025, the subordinate court stayed the proceedings before it for 120 days to enable the applicant procure a transfer order from this court, transferring the suit to this court. The subordinate court further ordered that in the absence of a transfer order within the 120 days, the

respondents' claim was to proceed to hearing as an undefended cause.

5. The respondents add that, the 120 days period lapsed without the applicant procuring the transfer order. Consequently, the subordinate court proceeded to determine the respondents' claim as an undefended cause vide a ruling dated 8/10/2025. The respondents argue that the already determined case cannot be transferred from the subordinate court to the Environment and Land Court. They urge the court to reject the application.
6. The court has considered the application, the response to the application, and the parties' respective oral submissions. The single question to be answered in this ruling is whether the applicant has made out a case for transfer of **Chuka CMC E & L Case No. 274 of 2018** to the **Environment & Land Court** at Chuka, for hearing and determination.
7. The jurisdiction of this court to transfer a case from a subordinate court to another subordinate court or to this court is donated by **Section 18** of the **Civil Procedure Act**. The said Section provides as follows:

“(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or

disposal to any court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—

i) try or dispose of the same; or

ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

iii) retransfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order”

- 8.** The relevant framework to the present application is contained in **Section 18(1)(b)(i)**. This court’s interpretation of the above framework is that, for a transfer order to be issued, the suit in respect of which the transfer order is sought should be one which is pending trial and or disposal by the subordinate court. Where the suit has already been disposed by the subordinate court, there would be nothing to be transferred for trial and/or disposal by the other court.

9. It is clear from the “judgment” exhibited by the applicant that on 22/5/2025, the applicant was given 120 days (*not 128 days*) within which to move this court and procure an order transferring **Chuka CMC E & L Case No. 274 of 2018** from the subordinate court to this court, for hearing and determination. It is also clear from the said “judgment” that in default of the applicant moving this court and procuring the transfer order, the subordinate court was to proceed to determine the respondents’ claim as an undefended cause.
10. It does emerge from the subordinate court’s subsequent “ruling” dated 8/10/2025, which the respondents exhibited, that owing to the applicant’s failure to promptly move this court and procure a transfer order within 120 days, the subordinate court proceeded to determine and dispose the respondents’ claim as an undefended cause and issued final disposal orders in the cause. Consequently, the respondents’ suit is not pending disposal and cannot, in the circumstances, be transferred to this court for trial and disposal.
11. The result is that, a transfer order under **Section 18 (1) (b) (i)** of the **Civil Procedure Act** is not available in relation to **Chuka CMC E & L Case No 274 of 2018** at this stage. That is the finding of this court on the single question in the application under consideration.
12. On costs, no proper grounds have been demonstrated to warrant a departure from the general principle in **Section 27** of the **Civil Procedure Act**. Consequently, the applicant shall bear costs of this miscellaneous application/suit.

13. Before issuing the final disposal orders, the court is constrained to make some observations relating to the disturbing manner in which this application has been handled. First, having been granted the limited period of 120 days on 22/5/2025, the applicant failed to see the urgency in bringing a formal application for the transfer order. She brought the present application on 16/7/2025, about two months later. Even then, she did not find it necessary to bring the application under the cover of a certificate of urgency. Consequently, the Court Registry listed the case for “pre trial” before the Deputy Registrar on 4/9/2025. On 4/9/2025, the case was again listed before the Deputy Registrar on 16/10/2025. On 16/10/2025, the Deputy Registrar listed the case for mention before the Judge on 24/11/2025. As at 16/10/2025, the 120 days period had long lapsed. By the time the application was being cause-listed before the Judge for the first time (*on 24/11/2025*), the subordinate court had already disposed the suit that was the subject matter of the transfer application. Certainly, the trajectory would have been different had the application been filed promptly and under the cover of a certificate of urgency.

14. In the end, for the reasons outlined above, the application dated 16/7/2025 is rejected and dismissed for lack of merit. The applicant shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 11TH DAY OF DECEMBER, 2025.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Applicant -Absent

Ms. Ocholla for the Respondent

Court Assistant - Mr. Mwangi

ORIGINAL