

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISC APPLICATION NO E327 OF 2025

**IN THE MATTER OF THE ESTATE OF THE LATE KIPSANG ARAP ROP
(DECEASED)**

**TAPYOTIN TULO MARABA.....1ST
PETITIONER/ADMINISTRATOR**

**CORNELIUS KIPNGETICH MARABA.....2ND
PETITIONER/ADMINISTRATOR**

VERSUS

**BARNABAS KIBICHII (suing as Chairman & Representative
Kamngoech Community Cattle
Dip.....OBJECTOR/APPLICANT**

**Coram: Before Justice R. Nyakundi
M/s Arusei & Co Advocates
M/s Limo R.K & Co Advocates**

RULING

1. What is pending before this Honourable Court for determination is a Notice of Motion Application dated 13th October 2025 premised under section 1A, 1B, 3A & 18 of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules in which the Applicant is seeking the following orders: -
 - a. *Spent*
 - b. *That the Honourable Court be pleased to order that the SUCCESSION CAUSE MCSUCC NO. 135 OF 2016 be transferred from Chief Magistrates Court, Eldoret to the Chief Magistrates Court at Eldama Ravine for hearing and determination.*
 - c. *That the costs of this application be costs in the cause.*
2. The Application is supported by the Annexed Affidavit of Barnabas Kibichii who deponed as follows: -

- a. *That the Honourable Court (Chief Magistrate's Court) Eldoret made an order on the 23rd September 2025 directing the parties to move the Eldoret High Court to have SUCCESSION MCSUCC NO. 135 of 2016, Chief Magistrate Court at Eldoret transferred to the Eldama Ravine Chief Magistrate's Court within thirty (30) days.*
- b. *That the suit property (cattle Dip) forms part of the Estate of the late Kipsang Arap Rop (Deceased) and is immovable land situate in Eldama Ravine Sub-County, Baringo County and all the concerned parties hail from Eldama Ravine.*
- c. *That section 12 of the Civil Procedure Act, parties that all suits for determination of rights and interests in immovable property shall be filed in the court within whose local limits such property is situate.*
- d. *That all the parties to this cause are residents of Eldama Ravine Sub-County, and it would be just, fair, convenient and cost-effective for the matter to be heard in Eldama Ravine Chief Magistrates Court. This aligns with the principles of sections 1A and 1B of the Civil Procedure Act, which enjoin courts to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes.*
- e. *That no prejudice will be suffered by the Respondent if the orders sought are granted, since the transfer will not affect the substance of the matter but will only ensure that it is heard at the nearest court.*
- f. *That it is in the interest of justice and in furtherance of the overriding objective of the court under sections 1A, 1B and 3A of the Civil Procedure Act that this cause be heard and determined by the court seized with local territorial jurisdiction over the subject property.*
- g. *That on the urgency, it is evident that the above ruling was rendered on the 23rd September 2025 and thirty (30) days granted to effect the transfer will lapse on the 23rd October 2025 with the real danger that unless there is compliance, the orders granted on the 23rd September 2025 will automatically stand vacated and if that happens,*

irreparable harm expose the objectors/applicants herein because not only will the injunctive orders stand vacated but also the objector's objection to the succession, that is the objector's claim to the community cattle dip will stand dismissed and the entire matter will come to an end.

h. That the respondents will not suffer any prejudice if this application is allowed.

i. That therefore a quick transfer will afford the parties an opportunity to be heard in an equality of arms before the law.

Analysis and Determination

3. I have read and considered the Notice of Motion Application and there is one sole issue for determination by this Honourable Court: -

Whether the Application for transfer is merited?

4. The transfer of cases from one Court of the Magistracy to another is a supervisory function of the High Court as set out in Article 165(6) and (7) of the Constitution of Kenya 2010 in the following terms: -

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

5. Section 17 of the Civil Procedure Act Cap 21 Laws of Kenya (hereinafter 'the CPA') provides as follows:

17. Power to transfer suits which may be instituted in more than one court:

Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court; and the High Court after considering the objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed.

6. Therefore, where a contest arises as to which Magistrates' Court shall hear and determine such a dispute, Section 17 mandates the High Court to decide which court to take over the conduct of the matters. Thus Section 17 of the CPA is an acknowledgement by the law that there are instances where a dispute may properly be instituted in two or more different magistrates' courts.
7. The power of the High Court to transfer and withdraw cases instituted in the Subordinate Courts is provided for in section 18(1) of the Civil Procedure Act which provides as follows: -

18. Power of High Court to withdraw and transfer case instituted in subordinate court

(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.

8. Under Section 18(1) of the Civil Procedure Act, this Court may exercise its supervisory jurisdiction to withdraw or transfer suits for trial and final disposal by itself or other courts subordinate to it. This law also gives the court the general power to transfer suits, which power may be exercised at any stage of the proceedings. A court may do so either on application by a party or suo moto.
9. It is a well-established principle of law that, when the transfer is at the instance of a party then the burden lies on the applicant to make out a strong case for the transfer. In **Equity Bank Limited Vs Bruce Mutie Mutuku t/a Diani Tour Travel (2016) eKLR**, the Court of Appeal held as follows: -

“In numerous decided cases, courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under Section 18 of the Civil Procedure Act to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent Court would be to muddle up the waters and allow confusion to reign. It is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where the Court lacks jurisdiction parties cannot even seek refuge under the O2 principle or the overriding objective under the Civil Procedure Act, the Appellate Jurisdiction Act or even Article 159 of the Constitution to remedy the same...”

10. Some of the matters to be taken into consideration are the balance of convenience, questions of expense, interest of justice and possibilities of

undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused. Additionally, the power under Section 18 of the Civil Procedure Act refers to competent suits filed in courts seized with the requisite jurisdiction to entertain them. The general power of the court to transfer suits under section 18 of the Civil Procedure Act cannot therefore be exercised in a matter where the suit was filed in a court without jurisdiction.

11. The Supreme Court case of **Albert Chaurembo Mumba and 7 Others Vs Maurice Munyao & 148 Others (2019) eKLR** held that: -

*“However, as it was well elucidated in the case of **Kagenyi vs Musiramo & Another (1968) EALR 43**, an order for transfer of a suit from one court to another cannot be made unless the suit has been brought, in the first instance, to a court which has jurisdiction to try it. It’s therefore irrelevant as parties cannot consent to confer jurisdiction to a Court or tribunal where it is not provided by law.”*

12. The Law of Succession Act at Section 48 provides for the Jurisdiction of Magistrates in the following terms: -

(1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under section 7(1) of the Magistrates’ Courts Act, Act (No. 26 of 2015).

13. The Law of Succession Act at Section 49 provides for the territorial Jurisdiction of a magistrate’s court as follows: -

The Magistrate’s Court within whose area a deceased person had his last know place of residence shall, if the gross value of the estate of

the deceased does not exceed the pecuniary limits set out in section 7(1) of the Magistrates' Courts Act, 2015, have in respect of that estate the jurisdiction conferred by section 48.

Provided that -

- i. the magistrate may, with the consent or by the direction of the High Court, transfer the administration of an estate to any other Magistrate's court where it appears that the greater part of the estate is situated within the area of that other magistrate or that there is other good reason for the transfer;*
- ii. if the deceased had his last known place of residence outside Kenya, the High Court shall determine which magistrate shall have jurisdiction under this section;*
- iii. every Magistrate's Court shall have jurisdiction, in cases of apparent urgency, to make a temporary grant of representation limited to collection of assets situated within his area and payments of debts, regardless of the last known place of residence of the deceased.*

14. A clear and holistic reading of Sections 48 and 49 of the Law of Succession Act lead to the inevitable conclusion that the place of instituting a succession matter is the Deceased's last known place residence. The exception to the foregoing general position is, where there is proof that the greater part of the deceased's estate is situated within a different area than that where the Deceased resided and/or worked.

15. The affidavit evidence establishes the following undisputed facts: the subject land is physically situated in Eldama Ravine Sub-County, the parties to the succession proceedings reside in that locality and the Eldoret Chief Magistrates Court has already directed the parties to move this court for transfer within thirty days. The objectors face a real risk that if the transfer is not granted within the thirty-day period the injunctive relief which protects the estate and the objectors' claim to the cattle dip

will lapse causing irreparable prejudice. The respondent has not shown any cogent prejudice that would be caused by ordering the transfer. On the contrary transfer promotes convenience access to justice and economy of process for parties who live in Eldama Ravine and for witnesses and documentary inspections.

16. In the exercise of its discretion to transfer a cause the court weighs considerations of territorial jurisdiction convenience forum non conveniens the interests of witnesses and parties and the need to avoid multiplicity of proceedings or injustice. Where the subject matter is immovable land and where the bulk of parties and evidence lie within the territorial jurisdiction sought transfer will ordinarily be appropriate provided no countervailing prejudice is shown. Having regard to sections 1A 1B and 3A of the Civil Procedure Act and Order 51 rule 1 of the Civil Procedure Rules and section 12 of the Civil Procedure Act, I am satisfied on the evidence before me that the balance of convenience and the interests of justice favour transfer to the Chief Magistrates Court in Eldama Ravine.

17. In view of the foregoing, the following orders shall abide: -

- a. *That the Notice of Motion dated 13th October 2025 is hereby allowed.*
- b. *That the Eldoret Chief Magistrate's Court Succession Cause No. 135 of 2016 be and is hereby transferred to the Eldama Ravine Chief Magistrate's Court for hearing and final disposal.*
- c. *That the Deputy Registrar of this Court shall take all necessary steps to facilitate the transfer and shall forward the record, pleadings and all relevant files to the Eldama Ravine Chief Magistrate's Court with immediate effect.*
- d. *That the Costs of this application shall be in the cause.*
- e. *It is so ordered.*

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 14TH DAY OF
JANUARY 2026**

.....
**R. NYAKUNDI
JUDGE**