

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT HOMABAY

ELC MISCELLANEOUS APPLICATION NO. E.015 OF 2025

**JUDITH ANYANGO OGADA (suing as the legal
representative of the estate of the late DEBORAH OWADE
OGADA
(DECEASED).....APPLICAN
T**

VERSUS

**THE THIRD ENGINEERING BUREAU OF CHINA CITY
CONSTRUCTION GROUP COMPANY LTD.....1ST
RESPONDENT**

**SAM ONYANGO OGADA.....2ND
RESPONDENT**

**AGNES ATIENO OTIENO.....3RD
RESPONDENT**

RULING

***(On whether the applicant's suit should be transferred to
the Homabay Chief Magistrate's court on account of
pecuniary jurisdiction)***

The Application

1. The applicant filed a Notice of Motion application dated 24th March 2025 under certificate of urgency. The application is expressed to be anchored under Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3A, 18 (1) (a) of the Civil Procedure Act and all other enabling provisions of the law.

2. The applicant seeks ORDERS THAT:

a) ...Spent

b) ...Spent

c) An order do hereby issue transferring the file/case in Oyugis PMC ELC No. 20 of 2020, Judith Anyango Ogada versus The Third Engineering Bureau of China City Construction Company Limited & 2 OTHERS to Homabay Chief Magistrate's court for hearing and determination.

d) Costs of the application be provided.

3. The application is premised on ground set out on the face of the application as well as the affidavit of JUDITH ANYANGO OGADA, the applicant herein. In a nutshell, the applicant's case, as borne out from the grounds and affidavit, is that the matter herein yet to be heard on merit. It is being handled by the Hon. Samson Ongeru (SPM) (as he then was) of Oyugis Law

Court. His pecuniary jurisdiction does not exceed Ksh.10,000,000/=. The applicant is apprehensive that, should she be successful in her cause, the court is likely to award her damages and costs of the suit. The award is likely to exceed Ksh. 10,000,000/=:, an amount way higher than the jurisdiction of the court. She, therefore, prays that her suit be transferred to the Homabay Chief Magistrate's court for purposes for hearing and determination since this latter court is clothed with jurisdiction.

4. She also stated that no prejudice would be suffered by the Respondents should the suit be transferred as prayed.

Response

5. The 1st respondent filed a replying affidavit dated 3rd April 2025. It is sworn by one Daniel Kigada, who deponed that he was an official of the 1st respondent. He is duly authorized to swear the affidavit. He vehemently opposed the application. He termed it an attempt at forum shopping. Further, that Hon. Samson Ongeri was, at the time of the application, a Senior Principal Magistrate with the requisite jurisdiction to hear and determine the matter.

6. In any event, the deponent stated that pecuniary jurisdiction does not apply to general damages. He added that at the time of filing the suit, the applicant sought ksh.4,828,000/= as special damages. He maintained that it is premature for the applicant to preempt and speculate that she would be successful in her matter after all, while it is still ongoing.

Issues, analysis and determination

7. The main issue for determination is whether the applicant's suit should be transferred to the Chief Magistrate's court at Homabay. Attendant this is the issue of costs.

8. In **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989) (Judgment)**, Nyarangi, J. underscored the significant of in the following terms:

"30. With that I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is

everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...’’

9. On pecuniary jurisdiction of judicial officers, **Section 7** of the Magistrates’ Court Act provides as follows:

“(1) A magistrate's 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.

(2) The Chief Justice may from time to time, by notice in the Gazette, revise the pecuniary limits of jurisdiction set out in subsection (1), taking into account inflation and change in prevailing economic conditions.”

10. It is instructive to note that the suit sought to be transferred was filed in the trial court in the year 2020. The court did not have a Chief Magistrate at the time. It is not explained why the applicant filed the suit in that court in the first place while she knew that it did not have the pecuniary jurisdiction she now allege it lacks. Additionally, it is not explained why all along, the applicant did not move this court, for almost five full years for the orders sought, only for her to suddenly turn to make the instant claims. Under **Section 60(1)(k)** of the **Evidence Act** this Court, is obligated to do the following: takes judicial notice of “...*the names of the members and officers of the court and of their deputies, subordinate officers and assistants, and of all*

officers acting in execution of its process...". The Honourable Ongeri Samson is a Judicial Officer who is in charge of a court station that I supervise and he acts in execution of this court's process. Moreover, this court is aware and has confirmed that, contrary to the applicant's averments, the Hon. Samson Ongeri was a Senior Principal Magistrate as at the time of the application. His pecuniary jurisdiction then was KShs 15,000,000/= and not KShs 10,000,000/= as alleged, and it is instructive that the Chief Justice had not extended it. It was a lie and or misleading for the applicant to lower the position of the said officer when she, too, ought to have taken judicial notice of that important fact that the judicial officer's rank was that of the Senior Principal Magistrate. Hence, she either knew of that fact and wanted to go on a forum shopping expedition or she fell short of the requirements of the Evidence Act on judicial notice. In any event it is purely speculative that the applicant would think that she could be awarded damages of a magnitude higher than a specific sum bearing in mind that such an award is at the discretion of the court. Furthermore, it is now in the public domain, and this court has once again taken judicial notice, of the fact that vide a decision of the

Judicial Service Commission communicated through Circular Ref. JSC/IMP/P&D/53/1106 dated 30th January 2026, the Honourable Onger Samson Omwenga was promoted to the rank of Chief Magistrate as from 1st February 2026. His pecuniary jurisdiction henceforth is KShs 20,000,000/= and below. The applicant must now happily and confidently move his court to conclude her matter.

11. In the circumstances, this court finds that the basis for the instant application that Hon. Onger did not have the pecuniary hear and determine was in the first place unfounded and not merited, and even so, it has been overtaken by events. Accordingly, the applicant's prayer to have the said matter transferred to the Chief Magistrate's court at Homabay is not granted since the Magistrate's Court at Oyugis had, and now much more than speculated, the jurisdiction to hear and determine her matter.

12. It is directed that since the Oyugis PMC ELC No. 20 of 2020, *Judith Anyango Ogada v The Third Engineering Bureau of China City Construction Company Limited & 2 OTHERS* is an old matter, now getting to six years in the court corridors, the Chief Magistrate, Oyugis Law Courts should prioritize its hearing and

conclusion. This Ruling be served by the Deputy Registrar of this Court on the Chief Magistrate, Oyugis Law Courts for further action.

13. The Applicant shall bear the costs of this application.

Ruling dated, signed and delivered virtually via the Teams Platform this 03rd day of February 2026.

Hon. Dr. *iur* Nyagaka,

Judge

In the presence of,

Orego Advocate for the Applicant online

Applicant (Ms. Judith) also present online

Ms. Odhiambo for the 1st Respondent online

Mr. Oguso for the 2nd and 3rd Respondents (absent).