



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chepkwony v Keter & another (Environment and Land Miscellaneous Application E023 of 2025) [2025] KEELC 5640 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5640 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAPSABET**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E023 OF 2025**  
**GMA ONGONDO, J**  
**JULY 29, 2025**

**BETWEEN**

**JANE CHEROTICH CHEPKWONY ..... PLAINTIFF**

**AND**

**JOSEPH KIMELI KETER ..... 1<sup>ST</sup> DEFENDANT**

**TAI NANCY CHERUTO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion application dated 14<sup>th</sup> July 2025, the applicant, JANE CHEROTICH CHEPKWONY through KUTTO AND KAIRA NABASENGE ADVOCATES is seeking the following orders;
  - a. Moot.
  - b. Moot,
  - c. That the Honourable Court be pleased to declare the entire proceedings and any consequential order(s) arising therefrom in the Kapsabet Chief Magistrate' Court, Environment and Land Case No. 10 of 2018; Joseph Kimeli Keter And Tai Nancy Cheruto (Suing as the Administrator of The Estate Of Benjamin Kipketer Tai) Vs Jane Cherotich Chepkwony null and void ab initio for lack of pecuniary jurisdiction.
  - d. The Honourable Court be pleased to call for the Kapsabet Chief Magistrates' Court, Environment and Land Case No. 10 of 2018. Joseph Kimeli Keter. and Tai Nancy Cheruto (Suing as The Administrator of The Estate of Benjamin Kipketer Tai) vs Jane Cherotich Chepkwony and admit the same at the Environment and Land Court at Kapsabet for hearing and determination.



- e. This Court do issue such other orders/directions as it may deem fit and just to serve the ends of justice in the circumstances herein.
  - f. Costs of this application be provided for;
  - g. That the Respondents be condemned to pay costs of this application.
2. The application is founded upon the applicant's affidavit of Twenty-Three paragraphs sworn on even date as well as fourteen grounds which include;
    - a) That by the Plaint dated 28<sup>th</sup> August,2012, the late Benjamin Kipketer Talai, the respondent herein filed the instant suit at Kisumu High Court Environment and Land Division being Civil suit No 38 of 2012.
    - b) That consequently the Applicant filed a statement of Defence and Counter Claim dated 5<sup>th</sup> December,2012.
    - c) That when the Environment and Land Court was devolved to the Chief Magistrates' Court, this suit was transferred to the Chief Magistrates' Court at Kapsabet, Environment and Land Court section vide ELC NO. 10 of 2018 whereby it is now pending hearing and determination.
    - d) That apparently due to this matter having overstayed in court for the last 13 years, the subject matter being the land parcel registration number LR NO 24076/18 (LR NO 107926) measuring approximately 44.28 acres (17.92Ha) has appreciated with time and it is now valued at Kshs. 22,000,000,000 (Kenya shillings Twenty-Two Million).
    - e) That it is impossible for the Applicant to amend her counter claim to claim mesne profits which exceeds Kshs. 20,000,000.00 which it is limit for Chief Magistrates' Court with regard to pecuniary jurisdiction.
  3. The respondents were duly served as disclosed in the affidavit of service sworn on 22<sup>nd</sup> July 2025 by Kaira Nabasenge learned counsel for the applicant.
  4. The application is for inter partes hearing today. The respondent is absent. Mr Kaira Nabasenge has implored the court to grant the orders sought in the application.
  5. In the foregone, is the application meritorious?
  6. The gravamen of the application is that the value of the suit land reference number 24076/18 (LR NO. 107926) is in excess of Kshs 20, 000, 000/= (Kenya Shillings Twenty million) as per the valuation report annexed to the applicant's affidavit-JCC 3. That therefore, the suit pending at Kapsabet Chief Magistrate's Court deserves transfer to this court for hearing and determination.
  7. The Constitutional and statutory provisions under which the application was commenced are borne in mind herein. Notably, section 7 of the Magistrates Courts Act 2015 provides for the jurisdiction of the magistrates' courts. By the application, the applicant has established that the said Chief Magistrate's court is devoid of jurisdiction over the suit.
  8. It is trite that jurisdiction is everything and without it, a court cannot make one more step; see Owners of the Motor Vessel 'Lillian S' -vs-Caltex Oil (Kenya) Ltd (1989) eKLR.
  9. The Respondents duly served with the application had the option to respond to the application but he opted not to it; see Ogada-vs-Mollin (2009) eKLR.
  10. It is thus, the finding of this court that the application is firm and merited.



11. Wherefore, the application dated 14<sup>th</sup> July 2025 is hereby allowed in terms of orders 3 and 4 sought therein as stated in paragraph 1 ((c) and (d) hereinabove.
12. It is so ordered.

**DATED and DELIVERED at KAPSABET this 29<sup>th</sup> day of JULY 2025**

**G M A ONGONDO**

**JUDGE**

Present;

Mr Kaira Nabasenge learned counsel for the applicant

Walter, court assistant

