



REPUBLIC OF KENYA



**Kungu v Kamoche & another (Environment and Land Miscellaneous Application  
E095 of 2025) [2026] KEELC 724 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 724 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E095 OF 2025  
JM ONYANGO, J  
FEBRUARY 5, 2026**

**BETWEEN**

**PATRICK NGANGA KUNGU ..... APPLICANT**

**AND**

**JAMES NGUGI KAMOCHÉ ..... 1<sup>ST</sup> RESPONDENT**

**FRANCIS KANGETHE KARANJA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this court is the Notice of Motion application dated 3<sup>rd</sup> October 2025 which seeks the following Orders:
  1. Spent...
  2. Spent...
  3. That an order be issued to transfer court file Kiambu ELC case 46 of 2020 from Kiambu CMC court to Thika ELC Court as it exceed the jurisdiction of the Magistrate Court and can only be heard by a ELC judge.
2. The application is premised on the grounds on its face and the supporting affidavit of Patrick Nganga Kungu sworn contemporaneously therewith.
3. The Applicant further asserts that the property in dispute involves several parcels including Kiambaa/ Thimbigua/1886, Kiambaa/ Thimbigua/1887, Kiambaa/ Thimbigua/1888, Kiambaa/ Thimbigua/1889 and Kiambaa/ Thimbigua/1890 (the suit properties) each with an estimated value of around Ksh. 10,000,000/-.



4. The Applicant asserts that the matter has been pending in Kiambu CMM ELC 46 of 2020 since the year 2020 and in that duration, it came to their attention that the value of the suit property has risen beyond the pecuniary jurisdiction of the magistrate's court, now exceeding twenty-one million.
5. The Applicant's position is that, having regard to the character of the dispute as it now stands, the Environment and Land Court (ELC) is the only court vested with the jurisdiction to hear and determine the matter.
6. The 1<sup>st</sup> Respondent opposes the application through Grounds of Opposition dated 4<sup>th</sup> November 2025 and takes the position that, by the Applicant's own admission, the value of the suit land exceeds the pecuniary jurisdiction of the Magistrates' Court. On that footing, the Respondent argues that the suit was void from its inception and therefore incapable of being salvaged by transfer to this Court.
7. The application is accordingly described by the 1<sup>st</sup> Respondent as a non-starter, scandalous, vexatious, and an abuse of the Court's process, and the Respondent urges its dismissal in limine with costs.
8. The 2<sup>nd</sup> Respondent similarly filed their Grounds of Opposition dated 7<sup>th</sup> November 2025 challenging the application seeking its dismissal with costs.
9. The Application was canvassed by way of written submissions duly filed by the respective parties.

#### **Issues for Determination**

10. Having considered the application, the affidavit in support, the Grounds of Opposition, the rival submissions and the relevant authorities, the sole issue that emerges for determination is: Whether this Court should exercise its discretion under section 18(1) of the [Civil Procedure Act](#) to transfer Kiambu CMM ELC 46 of 2020 to the Environment and Land Court.

#### **Analysis and Determination**

11. The power to withdraw or transfer proceedings is not an act of benevolence. it is a power conferred and disciplined by statute, and guided by principle.
12. That power is found in section 18 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.
  - (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 of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”
13. The statute is deliberate in its architecture. It vests discretion, but it circumscribes that discretion within a framework of lawful authority.
  14. The High Court (including Courts of equal status) may transfer or withdraw a proceeding, but only where a proceeding properly exists and is pending before a competent subordinate court. It may not act to breathe life into a matter that is, at its inception, void.
  15. Section 18(1) contemplates a proceeding capable of lawful trial or disposal. Where jurisdiction is absent, there is nothing to transfer, nothing to withdraw, and nothing upon which the statutory discretion may operate. The provision further contemplates notice and the opportunity to be heard, reflecting a dual concern for procedural fairness and the orderly administration of justice. It permits the Court, in its own motion, to act without notice, but always within the compass of competence and legality. Even the most liberal reading of the section cannot countenance the transfer of a proceeding that was never properly instituted.
  16. Subsection (2) reinforces this principle. Transfer or withdrawal does not erase the legal character of the suit. It allows the receiving court either to proceed from the point at which the matter arrived or to retry it entirely, but it presumes the existence of a proceeding capable of lawful trial. The High Court’s discretion is neither a license for indulgence nor a shield against the consequences of jurisdictional defect.
  17. In this matter, the plaint dated 29<sup>th</sup> September 2020 was filed in the Magistrates’ Court on 7<sup>th</sup> December 2020, as Kiambu CMM ELC 46 of 2020 at a time when no formal valuation had been conducted. It was only in 2024, when one parcel was at the request of the 2<sup>nd</sup> Respondent herein, formally valued by Circuit Valuers and Management Consultants at Ksh. 10 million.
  18. The suit property involved five similar parcels in dispute which were inferred to be of equivalent value. It then became apparent that the Magistrates’ Court no longer had jurisdiction thus resulting in the instant application.
  19. The Courts have long wrestled with the proper exercise of Section 18(1), tasked with balancing the sanctity of procedural authority against the imperatives of justice and equity. The jurisprudence reflects a delicate calibration between the strictures of jurisdiction and the broader demands of fairness, efficiency, and the substantive vindication of rights.
  20. In *Nyasimi v China Henan International Co-operation Group Co. Ltd* [2023] KEELC 15736 (KLR), the Court confronted a fundamental tension in the law of procedural transfer under section 18 of



- the *Civil Procedure Act*, exposing two divergent schools of thought. The first approach is rigid and formalistic: it treats jurisdiction as an immutable gatekeeper, holding that a suit instituted in a court without jurisdiction is a nullity, incapable of being transferred or validated.
21. Proponents of this view anchor themselves in the principle that jurisdiction is not a mere procedural technicality but the very foundation of lawful adjudication.
  22. To permit transfer of a nullity, they argue, would invert the law, replacing lawful authority with indulgence and undermining the legitimacy of the judicial process.
  23. This school regards the courts' role as custodians of jurisdictional propriety, and not as instruments to retroactively rescue ill-placed litigation. See: Phoenix of EA Assurance Company Limited vs S.M Thiga T/A Newspaper Service, Civil Appeal No. 244 of 2010 [2019] eKLR; Rebeca Chumo vs Christine Cheptoo Chumo [2021] eKLR.
  24. The second approach is liberal, purposive, and attuned to the realities of human litigation. It recognises that the rigid formalist doctrine, while logically coherent, may produce harsh results that disserve justice. Courts adhering to this reasoning hold that where a suit was filed in good faith, on a reasonable understanding of the jurisdictional parameters, and without causing prejudice to the opposing party, the High Court's discretion under section 18 should be exercised to transfer the matter to a competent forum.
  25. The second school of thought treats jurisdiction not only as a legal condition but as a functional instrument to achieve justice: it emphasises substance over procedural form, and fairness over technicality.
  26. In *Nyasimi* (supra), the Court reasoned that the Applicant's reliance on an expert valuation report, which at the time placed the suit within the Magistrates' Court's pecuniary jurisdiction, was sufficient to meet the standard of bona fide filing. The subsequent revision of the valuation did not retroactively render the suit incompetent, nor did it prejudice the respondent beyond manageable adjournment costs.
  27. The *Nyasimi* Court's careful exposition demonstrates that the two approaches are not merely procedural alternatives but reflect competing conceptions of justice itself: one anchored in legal certainty and authority, the other in fairness, equity, and pragmatic access to justice.
  28. Turning to the instant application, it is clear that the suit was filed in the Magistrates' Court in 2020, at a time when no formal valuation of the parcels had been conducted.
  29. From my examination of the evidence placed before the Court, the Applicant acted in good faith, presuming the Magistrate's court possessed the pecuniary jurisdiction to entertain the matter. This inference is supported by the absence of any objection on pecuniary grounds during the pendency of the suit before the Magistrates' Court. It was only in 2024, upon formal valuation, that it became apparent that the aggregate value of the five parcels exceeded the Magistrates' Court's statutory limit.
  30. Learned counsel for the Applicant contends that the transfer ought to be allowed, invoking the Overriding Objectives codified in Sections 1A, 1B, and 3 of the *Civil Procedure Act* and Article 159(2) (d) of *the Constitution*, which collectively obligate courts to exercise their powers to achieve justice, ensure fair and equitable treatment of the parties, and facilitate the expeditious, proportionate, and effective resolution of disputes.
  31. Counsel for the Applicant maintains that the Magistrates' Court had jurisdiction at the time the suit was filed in 2020 and that the subsequent valuation revealing a higher aggregate value does not undermine the bona fide nature of the filing.



32. In contrast, learned counsel for the 1<sup>st</sup> Respondent argues that the suit was without jurisdiction ab initio, asserting that no discretionary power under section 18(1) can rescue a proceeding that was never competent, and urges dismissal in limine.
33. Similarly, counsel for the 2<sup>nd</sup> Respondent submits that, in the absence of jurisdiction at the outset, the Court cannot exercise its power to withdraw and transfer the suit, as the statutory provision presupposes the existence of a valid proceeding.
34. The Court observes that Section 18(1) of the *Civil Procedure Act* confers upon the High Court a discretionary power to withdraw or transfer proceedings, yet this discretion is neither unbounded nor abstract; it is carefully circumscribed by law and informed by principle. The power presupposes the existence of a suit lawfully instituted before a subordinate court competent to entertain it.
35. At the time of filing Kiambu ELC case 46 of 2020, the Applicant's suit was lodged in the Magistrates' Court relying on the reasonable presumption that the court possessed pecuniary jurisdiction over the matter. The subsequent 2024 valuation, which establishes that the aggregate value of the parcels now exceeds the statutory threshold, does not retroactively vitiate the original filing.
36. The Court recognises that a rigid insistence on technical jurisdictional limits, applied without regard to the circumstances at the time of the filing, may frustrate the administration of justice. Where a suit was instituted in good faith, and no prejudice results to the opposing party, the Court's discretion under Section 18(1) may be exercised to transfer the matter to a forum now competent to hear it. In this way, the discretion serves not as indulgence, but as a means to preserve access to justice, uphold fairness between the parties, and ensure that procedural formalities do not become instruments of injustice.
37. In my view, the filing of the suit in 2020 was made in good faith, based on information reasonably available at the time, and fully competent within the Magistrates' Court's jurisdiction. To penalise the Applicant now for circumstances that emerged four years after the fact would elevate form over substance and frustrate the administration of justice.
38. In exercising its discretion under Section 18(1), the Court must reconcile the technical demands of jurisdiction with the overarching need to ensure access to justice, fairness between the parties, and the effective resolution of disputes.
39. In my view, justice demands that the Applicant be permitted to have the dispute adjudicated before the court competent to hear it.
40. It would be unjust to allow the procedural happenstance of an unascertained valuation at the time of filing to defeat a claim founded in good faith.
41. The exercise of discretion under Section 18(1) is meant to ensure that procedural formalities serve justice rather than obstruct it. To refuse transfer on such grounds would be to elevate technicality over principle and to deny the parties the full opportunity to have their rights considered on the merits.
42. It follows that the Kiambu MELC Case No. 46 of 2020 should be transferred to the ELC, where it shall be fully and fairly heard, and where the scales of justice may finally find their proper balance.
43. Accordingly, the application dated 3<sup>rd</sup> October 2025 is hereby allowed. There will be no order as to costs.

It is so Ordered.

**DATED, SIGNED AND DELIVERED, AT THIKA THIS 5<sup>TH</sup> DAY OF FEBRUARY 2026**

.....



**J. M. ONYANGO**

**JUDGE**

In the presence of:

Mr Ndung'u for the Applicant

Mr Mwangi Mburu for the 1st Respondent

Ms Kibebo for the 2nd Respondent

Court Assistant: Hinga

