

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KAKAMEGA**

**ELC MISC. CASE NO. E051 OF 2025**

**KHALIFA FIBANDA MULESI (Suing  
as the personal representative of the  
estate of JUMA SHIBENDE OLOO.....  
APPLICANT**

**VERSUS**

**SALEH OMUSOTSI MASAKHWE.....1<sup>ST</sup>  
RESPONDENT**

**JAMES OMUKUYIA EMALI..... 2<sup>ND</sup>  
RESPONDENT**

**RULING**

**Introduction**

1. Before court is a Notice of Motion dated 4<sup>th</sup> June 2025  
filed by the applicant seeking the following orders;

- a) That the Honourable court be pleased to  
transfer Mumias SPMCELC NO. E044 OF  
2024 (OS) for further directions.**

**b) That further to paragraph A above the Honourable court be pleased to re-instate MCELC NO. E044 OF 2024 (OS) for hearing in another court with competent jurisdiction.**

**c) Costs of this application be borne by the respondents**

**d) Such other orders as the court deems fit, just and expedient to grant.**

2. The application is premised on the supporting affidavit of the applicant sworn on 4<sup>th</sup> June 2025. The applicant's case is that he filed Mumias MC ELC CASE NO. E044 OF 2024 (O.S). That directions were given that the matter be determined by way of affidavits and written submissions. That the 2<sup>nd</sup> respondent alleged to have filed a replying affidavit which was never served on his advocate. That the matter was heard and the suit dismissed with costs to the respondents on 16<sup>th</sup> January 2025. That as the matter concerns land, the cause of action still survives. That the trial court lacked jurisdiction to determine his claim, and that he relied on "Nairobi ELC NO. E141 OF 2022". He attached a copy

of the Originating Summons and judgment in Mumias SPMCELC CASE NO. E044 OF 2024 (OS).

3. The application was opposed. The 2<sup>nd</sup> respondent filed a replying affidavit dated 27<sup>th</sup> September 2025, where he stated that the application was misplaced and frivolous. That the applicant's counsel was served with Memorandum of appearance, respondents' replying affidavits, witness statements and list of documents. That both parties requested to be heard by written submissions, which request was endorsed by court. That the matter was heard and determined and judgment entered and that the applicant failed to seek transfer before judgment. That the respondent has a series of cases over parcel No. E. Wanga/Lubinu/3135.
4. The respondent further stated that there was Case No. Mumias SPMCELC 16 OF 2019 where the court passed a judgment and decree that one Amina Nyarotso Shibende be evicted from the above parcel. That an appeal in respect thereof being Kakamega ELC CASE NO. E017 OF 2023, was dismissed. That the suit in the lower court is *res judicata* as the applicant's claim was

handled in the aforesaid suit and in Mumias SPMELC CASE NO. 44 OF 2024. He attached return of service and judgments in Mumias SPMELC NO. E044 OF 2024 and Kakamega ELC APPEAL NO. E017 OF 2023.

5. The court directed parties to file written submissions in support of their respective positions. On record are submissions filed by the respondent dated 2<sup>nd</sup> February 2026 which the court has duly considered.

**Analysis and determination.**

6. The court has carefully considered the application, the replying affidavit and submissions. The only issue that arise for determination is whether the applicant deserves the orders sought.
7. This court has the jurisdiction and discretion to transfer a suit pending before a Magistrates court to this court for hearing and determination, as provided for in section 18 (1) (b) ( i ) of the Civil Procedure Act. However, in the instant case, the applicant sought to transfer Mumias SPMCELC CASE NO. E 044 OF 2024 from the

Magistrates court to this court, yet that matter has already been heard and determined on merit by that court and judgment delivered on 16<sup>th</sup> January 2025.

8. Therefore, since Mumias SPMCELC CASE NO. E 044 OF 2024 (OS) was heard on merit to conclusion and a judgment delivered in respect thereof, there is nothing pending and no suit exists capable of being transferred. If the applicant is unhappy with the decision of the trial court, including his allegation that the said court had no jurisdiction to determine that case, the instant application is not the proper forum for him to express his dissatisfaction.

9. In the end, I find no merit in the application dated 4<sup>th</sup> June 2025 which I dismiss with costs to the respondents

10. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA  
IN OPEN COURT/VIRTUALLY THROUGH  
MICROSOFT TEAMS VIDEO CONFERENCING  
PLATFORM THIS 11<sup>TH</sup> DAY OF FEBRUARY 2026**

**A. NYUKURI**  
**JUDGE**

**In the presence of**

No appearance for the applicant

Mr. Luchivya for the respondent

Court Assistant: Delphine