



Okongo & another v Akali & another (Environment and Land Miscellaneous Case E023 of 2024) [2026] KEELC 1153 (KLR) (25 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1153 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E023 OF 2024
A NYUKURI, J
FEBRUARY 25, 2026**

BETWEEN

TOM JOSECK OKONGO 1ST APPLICANT

WILFRED OKENGO OKONGO 2ND APPLICANT

AND

FRANCIS OMULINDI AKALI 1ST RESPONDENT

MORRIS BWANA OKONGO LIBOYI 2ND RESPONDENT

RULING

Introduction

1. Before court is a Notice of Motion dated 12th November 2024 filed by the applicant seeking the following orders;
 - a. That this Honourable court be pleased to transfer Kakamega MC ELC No. E200 of 2024 from Kakamega Chief Magistrates Court to the Principal Magistrates court in Butere for hearing and final disposal thereof.
 - b. That costs of this application be provided for.
2. The application is premised on the supporting affidavit of the applicants sworn on 12th November 2024. The applicants' case is that there is Kakamega MC ELC Case No. E200 of 2024 between the parties herein and that there is a Succession Cause between the same parties in Butere court vide Succession Cause No. E026 of 2022 pending hearing and determination in regard to parcel Nos. Kisa/Wambulishe/1638 and 1639.



3. That the subject matter affects other eight beneficiaries. That it is in the interest of justice that the said beneficiaries are not subjected to unnecessary strain of following up the matters in two different courts and jurisdictions.
4. The application was opposed. The 1st respondent filed a replying affidavit dated 10th February 2025. He stated that the application was frivolous, premature, incompetent and an afterthought. That the applicant's prayer is misguided as the Magistrates court at Kakamega has jurisdiction to hear and determine this matter since the subject matter is situated in Kakamega County.
5. That both Kakamega and Butere law courts are situated in Kakamega county, a fact the court should take judicial notice of. That a pending Succession Cause at Butere cannot affect the court's jurisdiction in the matter in Kakamega Law courts. That on 14th August 2024 the trial court in Kakamega issued a temporary injunction restraining the applicants from trespassing on the suit property, but that they trespassed thereon on 6th December 2025 thus disobeying a court order.
6. Further that he has filed contempt proceedings against the applicant and hence is suspicious that the applicants are trying to evade contempt proceedings and attendant punishment. That the application is an afterthought and meant to unnecessarily delay and disrupt the proceedings thereof.
7. The 2nd respondent filed a replying affidavit dated 2nd July 2025. He stated that the application was an abuse of the court process and an afterthought. That the subject matter of the suit sought to be transferred is situated in Kakamega County, within the territorial jurisdiction of the trial court. That the suit referred to herein is different from the Succession Cause.
8. Parties were directed to file their respective submissions in respect of the application herein. On record are submissions filed by the applicants dated 20th March 2025 and those filed by the 2nd respondent dated 2nd July 2025; both of which this court has duly considered

Analysis and determination.

9. The court has carefully considered the application, responses thereto as well as the rival submissions. The only issue that arise for determination is whether the applicants deserve the orders sought. This court has jurisdiction to transfer a suit from one Magistrates court to another, as provided for in section 18 (b) (ii) of the *Civil Procedure Act*.
10. The applicant argues that the reason he seeks transfer is because eight beneficiaries in the estate touching on the suit property would like to follow up the matter and it will strain them to do so in Kakamega. That they would rather follow up from Butere. Those listed alleged beneficiaries are not parties to the suit in Kakamega, have never sought to be joined to that suit and it is clear to me that they have no identifiable stake in those proceedings.
11. Therefore, this court has no reason to make orders for purposes of enabling persons not parties to a suit, to follow up a matter which is not theirs. The applicant has not stated the prejudice he will suffer if the matter is not transferred to Butere.
12. Besides, Kakamega CMC L&E 200 of 2024 was filed in August 2024. The application to transfer the same was made in November 2024. In view of the delay, I take the position that the instant application was an afterthought. It is not denied that the suit property is situated in Kakamega County. Therefore, the Magistrates at Kakamega has jurisdiction to hear and determine Kakamega CM L&E No. 200 of 2024.



13. In the premises, I find no merit in the Notice of motion dated 12th November 2024, which I hereby dismiss with costs to the respondents.

14. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 25TH DAY OF FEBRUARY 2026

A. NYUKURI

JUDGE

In the presence of

Mr. Mbaka for the 1st respondent

The 2nd applicant in person

No appearance for the 1st applicant

No appearance for the 2nd respondent

Court Assistant: Delphine

