

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ELC MISC. APPLICATION NO. E019 OF 2025

BENARD KORIR.....
....APPLICANT

VERSUS

CHRISTOPHER SONOYA.....1ST
RESPONDENT

THE COUNTY LAND REGISTRAR, BOMET.....2ND
RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD
RESPONDENT

RULING.

Introduction.

1. This ruling is in respect of the Applicant’s Notice of Motion application dated 14th July, 2025. The application is expressed to be brought under **Sections 1A, 1B, 3, 3A & 18 (1)(b)** of the **Civil Procedure Act, Section 3(1)** of the Environment and land Court Act and **Article 159 (2)** of the Constitution of Kenya.

2. The application seeks the following prayers;

a. Spent

- b. That this Honourable Court be pleased to transfer Bomet Chief Magistrate's Court, MCELC Case Number 15 of 2023 to the Environment and Land Court for further disposal for determination by a Court with competent territorial jurisdiction. (sic)**
- c. That the cost of this application be provided for.**

3. The application is based on the grounds on its face and the Supporting Affidavit of the Applicant that is sworn on 14th July, 2025.

Factual Background,

4. The application under consideration first came up for hearing on 6th August, 2025 when the Court directed that it be served upon the Respondents.
5. The application came up for hearing on 14th October, 2025 but was adjourned to 29th October, 2025.

6. On 29th October, 2025 the Court issued directions that the application be canvassed by way of written submissions.
7. The application was mentioned severally to confirm filing of submissions before it was reserved for ruling on 27th January, 2026.

The Applicant's Contention.

8. The Applicant contends that his advocates on record filed Bomet CM ELC Case No. 15 of 2023.
9. The Applicant also contends that the said suit was heard and the trial Court delivered judgement on 11th June, 2025.
10. The Applicant further contends that the trial Court relied on **Section 7(1)** of the Magistrates Court Act and downed its tools. He goes on to state that the Court found that it does not have pecuniary jurisdiction.

- 11.** It is the Applicant's contention that he applied for and is waiting to be supplied with the proceedings and a copy of the judgement.
- 12.** It is also the Applicant's contention that under **Section 18(b)** of the Civil Procedure Act, this Court has powers to transfer Bomet CM ELC Case No. 15 of 2023 to the Kericho Environment and Land Court for further disposal.
- 13.** It is further the Applicant's contention that his advocates honest mistake should not be visited upon him.
- 14.** He ends his deposition by stating that the Respondents will not suffer any prejudice if the application is allowed as prayed.

The 3rd Respondent's Response

- 15.** In response to the Applicant's application, the 3rd Respondent filed grounds of opposition dated 24th October, 2025 which are as follows;

- a. That the Court cannot exercise the discretionary power conferred upon it by Section 18 of the Civil Procedure Act to transfer suits filed in Courts lacking jurisdiction to a Court with the competent jurisdiction.**
- b. That the application is an abuse of Court process and a disguise by the Applicant to sanctify an incompetent suit. The transfer power of the High Court under Section 18 of the Civil Procedure Act can only be exercised where the suit was filed in a Court of competent jurisdiction.**
- c. That in the case of Equity Bank Limited vs Bruce Mutie Mutuku t/a Diani Tour Travel [2016] eKLR the Court of Appeal held that;**

“In numerous decided cases, Courts including this Court have held that it would be illegal for the High Court in exercise of its powers under Section 18 of the Civil Procedure Act, to transfer a suit filed in a Court lacking jurisdiction to a Court with jurisdiction and therefore

sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred...It is so fundamental that where it [jurisdiction] lacks, a party cannot even seek refuge under the O2 Principal or the overriding objective under the Civil Procedure Act, the Appellate jurisdiction Actor even Article 159 of the Constitution to remedy the same.”

d. That the Application is unmerited and incompetent and therefore ought to be dismissed with costs.

Issues for Determination.

16. The Applicant filed submissions dated 3rd November, 2025 while the 3rd Respondent filed submissions dated 6th November, 2025.

17. The Applicant submits on the following issues;

a. Whether the instant application has merit.

b. Who should bear costs of this application.

- 18.** On the first issue, the Applicant reiterates the averments in his affidavit in support of the application, relies on **Sections 1A, 1B & 18** of the **Civil Procedure Act, Article 162 (2) (b)** of the Constitution, **Section 13(1)** of the Environment and Land Court Act and submits that Courts have power to transfer suits to Courts that have jurisdiction.
- 19.** The Applicant relies on the judicial decision of **Tochima v Chebii [2023] KEELC 22122 (KLR)** and submits that the trial Court had subject matter jurisdiction but did not have pecuniary jurisdiction.
- 20.** It is the Applicant's submissions that the appropriate and justiciable course is to transfer the said suit to this Court rather than declaring it a nullity.

- 21.** It is also the Applicant's submissions that procedure is the handmaiden and not the mistress of justice.
- 22.** It is further the Applicant's submissions that the procedural misstep herein that is centered on pecuniary jurisdiction should not extinguish a deserving claim especially where substantive justice can be achieved through transfer to the proper forum.
- 23.** The Applicant concludes his submissions by urging the Court to allow his application as prayed.
- 24.** The 3rd Respondent submits on the following issues;
- a. *Whether the application has merit.***
 - b. *Who should bear the costs of the application.***
- 25.** On the first issue, the 3rd Respondent submits that under **Section 18** of the **Civil Procedure Act**, this Court has jurisdiction to transfer a suit from a subordinate Court.

- 26.** The 3rd Respondent also submits that the exception to that rule is that a suit filed in a Court that does not have jurisdiction is incompetent and cannot be transferred to another Court.
- 27.** The 3rd Respondent relies on the Court of Appeal judicial decision of **Equity Bank Limited vs Bruce Mutie Mutuku t/a Diani Tour & Travel [2016] KECA 250 KLR** and submits that any suit filed in a Court that does not have jurisdiction is a nullity.
- 28.** The 3rd Respondent also relies on the judicial decisions of **Abraham Mwangi Wamigwi vs Simon Mbiriri Wanjiku & another [2012] eKLR, Phoenix of E.A Assurance Company Limited vs S.M Thiga t/a Nespaper Service [2019] eKLR** and submits that the Applicant's predicament cannot be cured by transfer from the trial Court to this Court.

29. It is the 3rd Respondent's submissions that the only remedy is for the Applicant is to withdraw the suit filed before the subordinate Court and file a new matter before a competent Court.

30. The 3rd Respondent concludes its submissions by urging the Court to dismiss the Applicant's application with costs.

Analysis and Determination.

31. I have considered the Applicant's application, the response thereto and the rival submissions. It is my view that the only issue that arises for determination is whether Bomet CMELC Case No. 15 of 2023 should be transferred to this Court.

32. Section 18 of the **Civil Procedure Act** provides as follows;

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. withdraws 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.”

33. Section 7 (1) and (2) of the Magistrates 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.

34. Section 9 (a) of the Magistrates Act provides as follows;

“A magistrate's Court shall –

(a) in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act (No. 19 of 2011) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to –

(i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations,

mining, minerals and other natural resources;
(ii) compulsory acquisition of land;
(iii) land administration and management;
(iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
(v) environment and land generally.

- 35.** I note that the Applicant did not attach the pleadings filed in Bomet CM ELC Case No. 15 of 2023 and neither did he attach the judgement that is alleged to have been delivered on 11th June, 2025.
- 36.** Nonetheless, it is not disputed that the Applicant filed Bomet ELC Case No. 15 of 2023 in the Chief Magistrate's Court at Bomet.

37. It is also not disputed that the said Court delivered judgment in the said matter and found that it does not have the pecuniary jurisdiction to hear and determine the suit.
38. What is in dispute is whether this Court can then transfer the said suit to this Court for hearing and determination.
39. In the judicial decision of **Oceanic Towers Limited v Hussein Builders Limited [2021] eKLR** the Court cited with approval the judicial decision of **David Kabungu v Zikarenga & 4 others Kampala HCCS No. 36 of 1995** where the Court stated as follows;

“Section 18(1) of the Civil Procedure Act gives the Court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo motu by the Court without application by any party. The burden lies on the Applicant to make out a strong case for the transfer. A mere balance of

convenience in favour of the proceedings in another Court is not sufficient ground though it is relevant consideration. As a general rule, the Court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice or the suit has been filed in a particular Court for the purposes of working injustice. What the Court has to consider is whether the Applicant has made a case to justify it in closing doors of the Court on which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction It is a well established principle of law that the onus is upon the party applying for a case to be transferred from one Court to another for due trial to make out a strong case to the satisfaction of the Court that the application ought to be granted. There are also authorities that the principal matters to be taken into

consideration are balance of convenience, questions of expenses, interest of justice and possibilities to undue hardship and if the Court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication must be refused. Want of jurisdiction of the Court from which the transfer is sought is no ground for ordering transfer because where the Court from which transfer is sought has no jurisdiction to try the case, transfer could be refused..."

(Emphasis mine)

40. The Court of Appeal in **Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel [2016] eKLR** stated thus;

"In numerous decided cases, courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under Section 18 of the Civil Procedure Act to

transfer a suit filed in a Court lacking jurisdiction to a Court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow Court to transfer an incompetent suit for want of jurisdiction to a competent Court would be to muddle up the waters and allow confusion to reign. It is settled that parties cannot, even by their consent confer jurisdiction on a Court where no such jurisdiction exists. It is so fundamental that where it lacks, parties cannot even seek refuge under the “O2” principle or the overriding objective under the Civil Procedure Act, the Appellate Jurisdiction Act or even Article 159 of the Constitution to remedy the situation. In the same way, a Court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through a transfer. In Abraham

Mwangi Wamigwi v Simon Mbiriri Wanjiku & Another [2012] eKLR, it was held as follows:-

“It is therefore trite that where a suit is instituted before a tribunal having no jurisdiction, such a suit cannot be transferred under section 18 aforesaid to a tribunal where it ought to have been properly instituted. The reason for this is that a suit filed in a Court without jurisdiction is a nullity in law and whatever is a nullity in law is in the eyes of the law nothing and therefore the Court cannot purport to transfer nothing and mould it into something through a procedure known as “transfer”. In other words, Courts can only transfer a cause whose existence is recognised by law.” (Emphasis mine)

41. As was held in **Oceanic Towers Limited v Hussein Builders Limited** (supra) and **Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel** (supra) where a suit is filed in a Court lacking jurisdiction, a transfer shall be refused.

Disposition.

42. Taking the foregoing into consideration, I find that the Applicant's application dated 14th July, 2025 lacks merit and it is hereby dismissed with costs.

43. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 30TH DAY OF APRIL, 2026.**

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Nadi for the Applicant.

Mr. Ojwang for the 2nd and 3rd Respondents.

1st Respondent. Absent

Mr. Makori - Court Assistant.

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