



REPUBLIC OF KENYA



Njoroge v Njoroge & 4 others (Environment and Land Miscellaneous Case E033 of 2025) [2026] KEELC 2412 (KLR) (28 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2412 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E033 OF 2025**

JA MOGENI, J

APRIL 28, 2026

BETWEEN

NDICHU NJOROGE PLAINTIFF

AND

RACHEL WAMBUI NJOROGE 1ST DEFENDANT

**NGUGI SAMUEL WAITHUKI T/A NGUGI WAITHUKI & CO
ADVOCATES 2ND DEFENDANT**

DISTRICT LAND REGISTRAR 3RD DEFENDANT

HONORABLE ATTORNEY GENERAL 4TH DEFENDANT

AND

ROSE WANJIKU NJAU INTERESTED PARTY

RULING

1. This is a classic legal dispute regarding the concept of jurisdiction specifically whether a Court that lacks the power to hear a case due to the value of the subject matter has the power to transfer that same case to a Court that does.
2. The application is brought under Order 51 of the Civil Procedure Rules and Section 18(b) and 3A of the *Civil Procedure Act*.
3. The Notice of Motion Application for transfer was filed by the Plaintiff/Applicant dated 10/04/2025 and it sought for the Order that:
 1. The Honorable Court to Order transfer of Magistrate Court Environment and Land Court, Githunguri, Case No. 6 of 2020 from the Principal Magistrate Court Githunguri to the Environment and Land Court, Thika for hearing and final disposal.



2. Cost be in the cause.
4. The grounds upon which the Application is based are on the face of the Application and supported by the Affidavit of Ndichu Njoroge sworn on even date.
5. The Applicant provides two main reasons for the necessity of this transfer which are that:
 - a. When the case was filed in 2020, it was believed that the land's value fell within the Magistrate's Court's pecuniary (monetary) jurisdiction, which is currently capped at Kshs 10 million.
 - b. After consultations between the lawyers for both sides, it was realized that 2.7 acres in Nyaga Location, Githunguri, actually has a market value exceeding Kshs 20 million. Because this value exceeds the legal limit of the Magistrate's Court, the suit must be moved to a superior Court the ELC that has the jurisdiction to handle higher-value claims.
6. In the Supporting Affidavit sworn by Ndichu Njoroge, the Plaintiff/Applicant, avers that land in that specific locality is valued at approximately Kshs 12 million per acre. Therefore, the subject property which is over 2.7 acres is worth significantly more than the Magistrate's Court is legally allowed to adjudicate.
7. He argues that the Githunguri Magistrate's Court cannot legally or conclusively settle the matter for want of pecuniary jurisdiction.
8. He therefore asserts that transferring the file to the Thika Environment and Land Court will not unfairly disadvantage any of the parties involved.
9. Only the 1st Respondent filed a response. She filed Grounds of Opposition dated 17/02/2026. When the parties appeared in Court on 17/02/2026 the Counsel for the 1st Defendant has informed the Court that they wanted to file a Preliminary Objection and they sought to be granted three days to file and serve.
10. Counsel for the Interested Party also sought 14 days and so did Counsel for the 3rd and 4th Defendants to file their responses. The Court granted all Respondents three days to file their responses and all parties were granted 14 days to file their written submissions.
11. I want to confirm that at the time of writing this Ruling none of the parties had filed any written submissions. That however does not stop the Court from writing its decision based on the pleadings on record.

Analysis and Determination

12. The only issue for determination is whether a suit filed in a Court lacking pecuniary jurisdiction that is initial jurisdiction is a nullity that cannot be saved by a transfer order under Section 18 of the [*Civil Procedure Act*](#).
13. The legal position on this has been historically divided given the different decisions by the Courts, but the prevailing strict view decreed by the Supreme Court in Samuel Kamau Macharia & Another v. Kenya. Commercial Bank & 2 Others, SC Application No. 2 of 2011; [2012] eKLR is that jurisdiction is a threshold matter.
14. Thus, if a Court lacks pecuniary jurisdiction, then the proceedings are coram non iudice considered not to be before a Judge.



15. Section 18 of the *Civil Procedure Act* presupposes that a competent suit exists. Most Courts hold that you cannot transfer a suit to a proper Court if the originating Court was incompetent to receive it in the first place.
16. The proper procedure for the Applicant would usually be to withdraw the suit and file a fresh one in the Environment and Land Court (ELC) Thika, rather than seeking a transfer to sanitize an invalid filing.

Final Disposal Orders

17. After considering the Notice of Motion, the Supporting Affidavit, and the Grounds of Opposition, the Court rules in the following manner:
 - i. The Court finds that the Principal Magistrate's Court at Githunguri lacked the pecuniary jurisdiction to entertain a claim involving land valued at over Kshs 20 Million at the time of filing or discovery thus the Grounds of Opposition are upheld.
 - ii. The Notice of Motion dated 10/04/2025 is hereby dismissed on the basis that this Court cannot transfer a suit that is inherently defective for want of jurisdiction.
 - iii. The suit in Magistrate Court Case No. 6 of 2020 is hereby struck out allowing the Plaintiff the liberty to file a fresh suit in the Court of competent jurisdiction.
 - iv. The costs of this application are awarded to the 1st Defendant.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA VIA VIDEOLINK THIS 28TH DAY OF APRIL, 2026.

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MOGENI J

JUDGE

In the presence of:

Miss Kamuyu for the Applicant

Miss Fundi for the 1st Respondent

2nd, 3rd and 4th Respondents - Absent

Mr. Melita - Court Assistant

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MOGENI J

JUDGE

