

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU**

**MISCELLANEOUS APPLICATION NO. E023 OF 2025**

**SAMUEL**

**WAWERU**

**KARIUKI.....APPLICANT**

**-VERSUS-**

**RUDIA            WANJIRU            NJAU.....1<sup>ST</sup>**

**RESPONDENT**

**NAFTALI WACHIRA KARIUKI**

**(Suing as the legal representative of the estate of**

**JOHN            KARIUKI            WACHIRA).....2<sup>ND</sup>**

**RESPONDENT**

**RULING**

**1.** This miscellaneous suit was filed through a notice of motion application dated 30.10.2025 where the Applicant is seeking a stay of the proceedings in ELC case no. E026 of 2025 before Nyahururu Magistrates court and that the said suit be transferred to Naivasha ELC for determination. The applicant who is the defendant in the aforementioned case argues that the continued hearing of the suit before the Nyahururu

Magistrates court severely prejudices him in respect to a fair trial.

2. In his supporting affidavit, the applicant states as follows;

**1) THAT I am the Applicant herein and therefore competent to make this affidavit as hereinunder;**

**2) THAT I swear this affidavit in support of the notice of motion seeking the transfer of ELC No. E26 of 2025 from ELC Nyahururu Magistrate Court to ELC Naivasha.**

**3) THAT I am the Defendant in ELC No. E26 of 2025 Nyahururu Magistrate Court.**

**4) THAT the suit was filed at Nyahururu Chief Magistrate Court, which is approximately a 264 kilometers round trip from my current residence in Magumo, where the cause of action also arose and where the Respondents also reside.**

**5) THAT the Environment and Land Court (ELC) at Naivasha is situated approximately 30 kilometers (27 minutes drive) from my place of residence, making it the most geographically convenient court.**

**6) THAT I suffer from a severe spinal condition which requires me to use a waist belt for support and limits my mobility, making long-distance travel physically excruciating and dangerous. (Annexed herewith and marked SKW-001, SWK-002, SKW-003 are medical reports and a letter to Nyahururu Law Courts).**

**7) THAT travelling the 264 kilometer distance to and from Nyahururu places me under immense physical strain and poses a serious risk to my health, recovery, and life.**

**8) THAT annexed and marked SWK-004 is a medical report dated 29<sup>th</sup> of October from Preston Otega, Clinician at Naivasha Sub-County Referral Hospital confirming my medical condition and advising against long-distance travel and be in bed rest.**

**9) THAT I am an elderly person aged 74 years, and due to my age and limited educational background, I possess no technological literacy necessary to navigate virtual court platforms**

**such as Microsoft Teams. (Annexed herewith and marked SWK-005 is a copy of my identification card).**

**10) THAT I am not able to reliably access or operate the required internet, computer, or smartphone technology, nor do I have access to a reliable support system in Magumo that can facilitate high-quality virtual appearances.**

**11) THAT compelling me to attend court virtually would severely jeopardize my ability to understand the proceedings, give clear evidence, and follow the court's directions, thereby infringing upon my right to a fair hearing.**

**12) THAT therefore, the only realistic and constitutionally compliant way for me to prosecute or defend this matter is through physical attendance at a court that is geographically safe and convenient for my medical condition.**

**13) THAT I verily believe that the transfer of this suit to the Environment and Land Court (ELC) Naivasha is necessary to ensure the ends of justice are met, given the grave medical risk and digital hardship associated with attending the Environment and Land court (ELC) Nyahururu.**

**14) THAT unless this application is certified and heard immediately and orders sought herein granted, the Applicant stands to suffer irreparable loss, damage and prejudice.**

**15) THAT no prejudice will be occasioned to the Respondents.**

**16) THAT I am willing to prosecute this matter to its finality and I humbly request this court to allow this matter to be transferred to the Environment and Land Court (ELC) Naivasha.**

**17) THAT what is deponed herein is true to the best of my knowledge, information and belief.”**

**3.** In opposition thereof, the 1<sup>st</sup> respondent filed a replying affidavit dated 2.12.2025 where she contends as follows;

- 1. THAT the application dated 30.10.2025 is an abuse of the court process and meant to create unnecessary confusion in the proceedings and to delay the determination of the suit.**
- 2. THAT the primary suit was filed on the 26.01.2024 at the Environment and Land Court at Nyandarua and assigned ELC Case No. E003 of 2024. (Annexed and marked "RWW1" is a copy of the Plaintiff).**
- 3. THAT the Applicant was served with summons to enter appearance and other court pleadings and he entered an appearance and he filed his statement of defence.**
- 4. THAT when the matter came up on the 04.06.2024 before Justice Angima for a pretrial conference and fixing a hearing date, the Applicant made two applications; the first one for leave to amend his defence and file a trial bundle and the second one was for the matter to be transferred to Engineer SPM Court citing the value of the subject matter of the suit land fell**

**within the jurisdiction of a Magistrate's Court. (Annexed and marked "RWW2" is a copy of the application for transfer).**

**5. THAT I did object to the above application for transfer through a replying affidavit dated 18.06.2024 but the application for transfer was allowed on the 23.09.2024.**

**6. THAT the file was transferred to Engineer SPM Court and assigned a new case number being Engineer SPM ELC No. E039 of 2024.**

**7. THAT we appeared before Hon. Wanjala on the 07.11.2024 for a pretrial conference and fixing a hearing date when the Magistrate recused herself in the matter citing a letter written by the Applicant herein objecting to her court handling the case. The matter was thus placed before Hon. Barasa Court No. 1 for directions.**

**8. THAT when we appeared before Hon. Andika on the 04.02.2025 for a pre-trial conference, the Applicant herein sought for leave to file more documents. When questioned by the court on**

**what documents he intended to file, he reported that he did not know the documents he was yet to file. The court indulged him amidst our objection and the matter was fixed for a further mention on the 04.03.2025 to confirm filing of the further documents by the Applicant and fixing a hearing date.**

**9. THAT on the 04.03.2025 the Applicant herein sought yet for another adjournment in the matter this time on grounds that he intended to have the 2<sup>nd</sup> Plaintiff subjected to a handwriting examination by an expert. My advocates raised objections and insisted that the suit be fixed for hearing but the court indulged him and he was granted 14 days to file an application and the matter was adjourned to 08.04.2025.**

**10. THAT it is then that we discovered that the whole idea behind the delay and several applications for adjournment by the Applicant was to enable him subdivide the suit land into several plots and transfer the subdivisions to**

**3rd parties to defeat our suit. We thus filed an application dated 26.03.2025 seeking for maintenance of the status quo pending the hearing and determination of the suit. Directions were issued on 30.03.2025 that the application be served for interpartes hearing on 08.04.2025. (annexed and marked “RWW3” is a copy of the application and the directions).**

**11. THAT on the 08.04.2025, the Applicant herein denied knowledge of the application indicating that he had not been served. He further raised many issues citing other cases not involving us that were before the Olkalou Magistrate’s Court. This overwhelmed the Magistrate and he immediately transferred the suit to the Olkalou Principal Magistrate Court for disposal. This was not the first time the said Magistrate had recused himself in suits involving the Applicant and had them transferred to Olkalou Magistrate’s Court.**

**12. THAT when we appeared before Hon. J. Nthuku Principal Magistrate Olkalou on the 19.06.2025, the court recused itself in the suit on grounds that it was handling other suits involving the Applicant which had been transferred from Engineer. The file was placed before the ELC Judge Nyandarua for further directions.**

**13. THAT the ELC Judge Nyandarua transferred the suit to Nyahururu Chief Magistrate's Court for hearing and determination. (annexed and marked "RWW4" is a copy of a letter dated 02.07.2025)**

**14. THAT when the matter was mentioned on the 13.08.2025 before Hon. E. Keago Chief Magistrate Nyahururu, we sought for directions on the pending application dated 26.03.2025 and the Applicant herein sought for 4 weeks to file submissions. He was granted 28 days to file submissions and the court proceeded to fix the application for mention on the 10.09.2025 and**

**issued a temporary stay order restraining the Applicant from subdividing the suit land.**

**15. THAT the Applicant openly expressed his displeasure but he did not raise the issue of illness and distance raised in the present application.**

**16. THAT the Applicant did not file submissions as directed and on the 10.09.2025 the application dated 26.03.2025 was fixed for ruling on the 22.10.2025.**

**17. THAT the ruling was delivered as scheduled and where the application was allowed and the court directed that the suit be heard and concluded within a period of 6 months. (annexed and marked "RWN5" is copy of the ruling).**

**18. THAT when the matter came up for mention on the 19.11.2025 for fixing a hearing date, the Applicant objected to fixing of a date citing the present application.**

**19. THAT from the above, it is evident that the Applicant is forum shopping for what he**

**perceives as a suitable court for him and this shall be the fifth time a court shall be transferring the suit to a different court and Judicial Officer at the instance of the Applicant.**

**20. THAT both parties have fully complied with Order 11 in the suit and it is only fair and just that the matter be fixed for hearing on one clear date to bring the suit to an end.**

**21. THAT the Applicant had earlier objected to the suit being heard by the ELC on grounds that the value of the subject matter was within the jurisdiction of a Magistrate's Court and it beats logic why he is now insisting on the matter proceeding before the ELC Naivasha.**

**4.** I have considered the rival arguments. It is noted that the applicant has not denied the litigation history of this suit where it has moved from one court to another, the latest being the transfer by the ELC court at Olkalou from the magistrate's court in Olkalou to the magistrate's court in Nyahururu with multiple applications in between. The applicant simply was mute on these facts.

**5. In re Estate of Julius Ndubi Javan (Deceased) [2018]**

**eKLR**, the court had this to say on none disclosure of material facts.

**“Needless to state that, in any judicial proceeding, parties must make full disclosures to the court of all material facts to the case including succession cases. This general rule of law emphasizes utmost good faith (uberimae fidei) from parties who take out or are subject of the court proceedings. The said responsibility is part of justice itself. Accordingly, non-disclosure of material facts undermines justice and introduces festering waters into the pure steams of justice; such must, immediately be subjected to serious reverse osmosis to purify the streams of justice, if society is to be accordingly regulated by law”. Emphasize added.**

**6.** In the case at hand, the conduct of the applicant must be subjected to serious reverse osmosis to purify the streams of justice, in this case by putting a break to the forum shopping applications in this matter. I have seen the ruling delivered

by the magistrate's court at Nyahururu directing that the matter be set down for hearing within 6 months. The applicant ought to give due attention to this order instead of scuttling the expeditious disposal of the matter through forum shopping. In the end, this suit is hereby dismissed with costs to the 1<sup>st</sup> respondent

**DATED, SIGNED AND DELIVERED AT NYAHURURU  
THIS 6<sup>TH</sup> DAY OF MAY, 2026 THROUGH MICROSOFT  
TEAMS.**

**LUCY N. MBUGUA**  
**JUDGE**

**In the presence of:**

**Bedan - Court Assistant**

**Applicant present in person**

**Waichungo Martin for the Respondent**