



**REPUBLIC OF KENYA**

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

**ELCL MISC. CASE NO. E006 OF 2026**

**IRENE KARWITHA KITHINJI.....1ST**

**APPLICANT**

**MERCY NKATHA KITHINJI .....2ND**

**APPLICANT**

**PRISCILLA MAKENA KITHINJI.....3RD**

**APPLICANT**

**SAMUEL MWENDA KITHINJI.....4TH**

**APPLICANT**

**=VERSUS=**

**HENRY NDUMBA.....1ST**

**RESPONDENT**

**PETER MUNENE.....2ND**

**RESPONDENT**

**FREDRICK KIMATHI.....3RD**

**RESPONDENT**

**ELIJAH MWIRIGI &**

**55 OTHERS.....4TH TO 59TH  
RESPONDENTS**

**=AND=**

**COUNTY GOVERNMENT OF MERU.....INTERESTED  
PARTY**

**RULING**

1. Falling for determination in this ruling is the amended notice of motion dated 18/2/2026. The notice of motion was initially dated 29/1/2026. It was brought by **Irene Karwitha Kithinji, Mercy Nkatha Kithinji, Priscilla Makena Kithinji** and **Samuel Mwenda Kithinji** [*hereinafter referred to as “the applicants”*]. Through it, the applicants seek an order transferring **Meru CMC E & L Case No E076 of 2024** to the Environment and Land Court at Meru [this Court] for hearing and determination. The application was opposed by the respondents. The key question to be determined in the ruling is whether a proper basis has been demonstrated to warrant a transfer of the said suit to this Court for hearing and determination.
2. The application was premised on the grounds outlined in the amended motion and in the supporting affidavit dated 18/2/2026. It was canvassed through oral submissions tendered in the virtual court on 13/4/2026. The case of the applicants is that in 2024, they instituted Meru CMC E & L Case No E076 of 2024 against the four respondents and named the County Government of Meru as an interested party in the suit. Subsequent to that, the respondents filed an application dated 23/5/2025 seeking joinder of 55 other persons as defendants

in the suit. Vide a ruling dated 17/11/2025, the Lower Court allowed the said application, thereby increasing the number of defendants from 4 to 59 persons. The 59 defendants subsequently introduced a counterclaim in the said suit.

3. The applicants contend that due to the now large number of defendants and the introduced counterclaim, this court is best - suited to hear and determine the dispute in exercise of its original jurisdiction under **Article 162(2) (b)** of the **Constitution**. They state that the facts and documents involved in the case are convoluted and intricate, hence the need to transfer the case to this court for hearing and determination.
4. The respondents opposed the application through a replying affidavit sworn on 4/2/2026 by **Henry Ndumba** and oral submissions tendered in the virtual court by **Mr. Muriuki**. The case of the respondents is that no proper grounds have been advanced to warrant a transfer of the case from the Chief Magistrate Court to this court. The respondents argue that the Chief Magistrate Court is properly seized of jurisdiction to hear and dispose the issues raised in the suit before it. They urge this Court to dismiss the application.
5. The court has considered the application, the response to the application and the parties' submissions. The court has also considered the relevant legal framework and the prevailing jurisprudence on this court's jurisdiction to withdraw a suit from a subordinate court and transfer it to itself for hearing and determination. As pointed out in the opening paragraph of this ruling, the key question to be determined in the application is whether a proper basis has been demonstrated

to warrant a transfer of Meru CMC E & L Case No E076 of 2024 to this court for hearing and determination.

6. The general jurisdiction of this court to transfer a suit from a subordinate court is donated by **Section 18** of the **Civil Procedure Act** which 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) withdraw 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.***

7. The relevant jurisprudential principle on the jurisdiction was ably outlined by Okello J in **Kampala HCCC No. 36 of 1995; David Kabungu v Zikarenga & 4 others** as follows:

***“Section 18(1) (b) 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 moto 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 a relevant consideration. As a general rule, the court should not interfere unless the expenses 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 purpose of working injustice. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction... It is 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 expense, interest of justice and possibilities of undue hardship, and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused.”***

8. Have the applicants made out a case to warrant a transfer of the suit from the Chief Magistrate Court to this Court? The key grounds advanced in the motion are twofold: (i) that the number of defendants has increased from 4 to 59; and (ii) that the 59 defendants have introduced a counterclaim. Increase of the number of defendants from 4 to 59, per se, is not a proper reason that would warrant transfer of a suit from a Chief Magistrate Court to this Court. As long as the Lower Court has been granted general legal mandate and the subject matter of the dispute falls within the pecuniary jurisdiction of the Court, the said Court is, by law, deemed to be properly seized of jurisdiction to hear and determine the dispute, notwithstanding the number of plaintiffs or the number of defendants involved in the case.
9. Secondly, the applicants have not demonstrated that the counterclaim which the respondents have introduced falls outside the general legal mandate or the pecuniary jurisdiction of the Chief Magistrate Court. If that were the case, the parties to worry most are the counter-claimants.

- 10.** For the above reasons, the court's evaluation of the grounds advanced by the applicants does not disclose a proper ground that would justify its exercise of transfer jurisdiction under **Section 18(2)** of the **Civil Procedure Act**. Consequently, the finding of the court is that no proper grounds have been demonstrated to warrant a transfer of **Meru CMC E & L Case No E076 of 2024** from the Chief Magistrate Court at Meru to this Court. The result is that the application under consideration is rejected for lack of merit.
- 11.** On costs, the general principle is that costs follow the event. No proper grounds have been advanced to warrant a departure from the general principle. Consequently, the applicants shall bear costs of this miscellaneous application (the suit).

**DATED, SIGNED AND DELIVERED AT MERU THIS 12TH DAY OF MAY, 2026.**

**B M EBOSO [MR]  
JUDGE**