



Oyuko & 2 others v Onyando (Environment and Land Miscellaneous Application E032 of 2025) [2026] KEELC 2782 (KLR) (12 May 2026) (Ruling)

Neutral citation: [2026] KEELC 2782 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E032 OF 2025**

AE DENA, J

MAY 12, 2026

BETWEEN

ZAKAYO OYUKO 1ST APPLICANT

MOSES OCHIENG 2ND APPLICANT

JANES ADERO ABIERO 3RD APPLICANT

AND

SIMELIA ANYANGO ONYANDO RESPONDENT

RULING

1. The court is tasked with determining whether the prayers sought in the Notice of Motion Application dated 3/11/2025 should issue.
2. The applicant seeks the transfer ELC CASE NO E036 OF 2024 Simela Anyango Onyando v Zakayo Ayuko & Moses Ochieng Auma from Bondo Law Courts to the Environment and Land Court Siaya for hearing and determination.
3. The application is premised on the grounds on its face and the supporting affidavit of Moses Achieng Ouma sworn on 3/11/2025.
4. That during pre-trial conference in Bondo MCELC No. E036 of 2024-Simelia Anyango Onyando v Zakayo Ayuko & 2 others, the Respondent herein supplied the Honourable Court with Pleadings and Judgment in Bondo MCELC E032 of 2023 Simelia Anyango Onyando v Bondo-Rarieda Sub-County Registrar, which confirmed that a similar dispute had been filed, heard and determined by the Magistrate Court at Bondo.
5. That whereas Bondo MCELC E032/2023 was secretly heard and determined before honourable J.P. Nandi (SPM) without the Respondent involving the Applicants herein; the Respondent has now filed Bondo MCELC EO36 /2024 before Hon. Dr. D. N. Ogoti (CM) in the very Magistrate Court.



- 6 The two cases cited above revolve around the same subject matter which is Land Parcel South - Sakwa /Barkowino/9706 & 9707). However, given the Plaintiff secretly prosecuted Bondo MCELC E032/2023 *ex parte* and got favorable Orders, the Applicants are apprehensive and skeptical that the same Magistrate Court cannot hear and determine the current case ELC E036/2024 objectively as it may be influenced by its previous Judgment which was *ex parte*.
- 7 Further the Honourable Dr. Ogoti (CM) presiding over Bondo MCELC E036/2024 has no jurisdiction to revise, review or alter the reasoning of his brother Honorable Nandi (SPM) in Bondo MCELC E032/2023.
- 8 That allowing the same subordinate court to hear the matter would, in effect, make it sit as an appellate court over its own decision, contrary to law and principles of natural justice.
- 9 That the High Court has the jurisdiction and discretion under Section 18 of the *Civil Procedure Act* to order the withdrawal and transfer of suits between subordinate courts and itself.
- 10 In his supporting affidavit the applicant states he is a party to the suit Bondo MCELC No. E036 of 2025 -Simela Anyango Onyango v Zakayo Ayuko & Moses Ochieng Auma which is currently pending before Bondo Law Courts. That the same court had previously heard and determined a related matter Bondo MC ELC E032/2023 -Simelia Anayango Onyando v Bondo Subcounty Lands Registrar involving substantially the same issues and the same subject matter.
- 11 That the current matter Bondo MCELC E036/2024 arises directly from or is substantially connected with the earlier decision of the same court in Bondo MCELC E032/2023. That if the matter proceeds before the said court, it will amount to the court sitting in appeal over its own decision, which is against due process and against the rules of natural
- 12 Copies of the Plaintiff in MCELC E036/2024 -MOA1; The Pleadings in MCELC E032/2023-MOA2; The Judgment in MCELC E032/2023-MOA3 and Letter of Authority from Co-Applicants are annexed.

Replying Affidavit

- 13 In her response vide a replying affidavit sworn on 28/01/2026 the respondent Simelia Anyango states that she is the plaintiff in Bondo E036/2024.
- 14 That the pleadings as filed in this court do not disclose all the parties in Bondo MC ELC Case No. E036 of 2024. She avers that the same is between herself Simelia Anyango Onyando (as the Plaintiff), Zakayo Ayuko (as the 1st Defendant), Moses Ochieng' Auma (as the 2nd Defendant) and Joanes Adero Abiero (as The Third Party) and The Bondo Sub-County Land Registrar (as the 1st Interested Party).
- 15 That the Applicant has also mischievously avoided to annex copies of the pleadings filed in Bondo MC ELC Case No. E036 of 2024 by Defendants, the Third Party and the Interested Party in that suit. That the 1st and 2nd Defendants in that suit (the 1st and 2nd Applicants herein), instructed the firm of M/s. Lawi Ogutu & Company, advocates, who filed a statement of defence and a Third-Party Notice for service upon the 3rd Applicant herein, Joanes Adero Abiero; - the responses are annexed as SAO – 1 and 2 respectively. That on 18th February, 2025 M/s. Lawi Ogutu & Company, advocates filed the Third Party's Statement of Defence & Counter-claim on behalf of the 3rd Applicant herein, Joanes Adero Abiero, in Bondo MC ELC Case. No. E036 of 2024; the same is annexed as SAO - 3, and in paragraph 3 thereof he refers to the Land Registrar's intention to "deregister" the title deed which had been issued to Simelia.



- 16 It is deponed that State Counsel entered appearance for the Land Registrar in Bondo MC ELC Case No. E036 of 2024, but has not yet filed any Statement of Defence, the Memorandum of Appearance is annexed as SAO - 4.
- 17 That she has since filed a Reply to Defence and Defence to the Third Party's Counter-claim Registrar in Bondo MC ELC Case No. E036 of 2024, in which she has disclosed the proceedings in Bondo MC ELC Case No. E032 of 2023 (Simelia Anyango Onyando - v - Bondo-Rarieda Sub-Counties Land Registrar), relating to the Land Registrar's intention to deregister the title deed which had been issued to her and annexes the Defence to Counter-claim as SAO - 5.
- 18 The deponent denies that the proceedings in Bondo MC ELC Case No. E032 of 2023 (Simelia Anyango Onyando - v - Bondo-Rarieda Sub-Counties Land Registrar) were secretly heard and determined before the Hon. J. P. Nandi (SRM), because the Land Registrar was duly served and present Applicants were not parties to that suit because they had not threatened to cancel her title deed.
- 19 It is averred that the proceedings in Bondo MC ELC Case No. E032 of 2023 (Simelia Anyango Onyando - v - Bondo-Rarieda Sub-Counties Land Registrar), were only against the threat to cancel my title deed, as at that date the Land Registrar did not disclose that there any persons who were also claiming title to the same property.
- 20 That she has no objection to the suit now pending for hearing in Bondo MC ELC Case No. E036 of 2024 being transferred to any other court with competent jurisdiction. However, the deponent raises the following issues as of importance for consideration:
1. That the case in Bondo MC ELC Case No. E032 of 2023 (Simelia Anyango Onyando - v - Bondo-Rarieda Sub-Counties Land Registrar), was heard and determined by Hon. J. P. Nandi, who is no longer stationed at Bondo law courts; if any party aggrieved with the judgement can only appeal it or apply for review;
 2. The fact that it has not been demonstrated that there are no other magistrates at Bondo, and/or that any other magistrate at Bondo (and not necessarily Hon. Dr. D. N. Ogoti, CM) is incapable of objectively hearing and determining the suit now pending in Bondo MC ELC Case No. E036 of 2024 on the merits;
 3. The fact that the legal requirement that as far as possible all suits should be instituted in the nearest court where the cause of action arose and where the Defendant resides; and,
 4. The fact that the pecuniary jurisdiction of the court and the value of the subject matter in issue is within the jurisdiction of the lower court.
- 21 The deponent believes that the Applicants' desire to have the suit pending in Bondo MC ELC Case No. E036 of 2024 to be transferred to Environment and Land Court at Siaya is a subtle attempt to have this Honourable Court sit on appeal against the judgement delivered in Bondo MC ELC Case No. E032 of 2023 (Simelia Anyango Onyando - v - Bondo-Rarieda Sub-Counties Land Registrar} when no valid appeal has been filed before this Honourable Court.
- 22 The court is reminded that one of the overriding objectives of the rules of this Honourable Court is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. That the suit pending for hearing in Bondo MC ELC Case No. E036 of 2024 is already being processed and discovery is being taken and which is now ready for hearing and should be allowed to proceed before that court albeit she is not opposed to the same being transferred to another court if there is a good or valid reason to do so.



Submissions

- 23 The applicant's emphasis is that the Respondent who earlier concealed that she had litigated the Suit Parcel in Bondo MCELC 32 OF 2023 before Hon. J.P Nandi (SPM) and obtained a favorable Decree ex parte also filed the present case concerning the very suit land in MCELC E036 OF 2024 against the Applicants herein.
- 24 It is submitted the Chief Magistrate Court is not only conflicted having heard and determined Bondo MCELC E032 of 2023 in favor of the Respondent ex parte. Consequently, hearing MCELC E036 of 2024 on its merit may be a challenge and the Applicants are skeptical that the current magistrate is not clothed with the requisite jurisdiction to overturn the earlier decision of his predecessor who already made a finding in favor of the Respondent in the earlier suit.
- 25 That Applicants' case is anchored on the proposition that the jurisdiction to transfer or reallocate a case from one subordinate Court to another is vested exclusively in the High Court under Sections 17 and 18 of the *Civil Procedure Act*. Section 18(1)(b) empowers the High Court, on its motion or Application, to withdraw any suit or proceeding from a subordinate court and transfer it to another subordinate court competent to try it. The Applicants contend that there is no equivalent statutory power conferred upon a magistrate to transfer a case to another magistrate of concurrent jurisdiction.
- 26 That Interested Party, on the other hand, maintains that the impugned direction was merely an internal case management measure intended to promote efficiency and impartiality, and that no prejudice has been demonstrated. He invokes Article 159(2)(b) and (d) of *the Constitution* to urge the Court to disregard undue technicalities and facilitate the expeditious determination of the dispute.
- 27 It is submitted that a court cannot arrogate to itself jurisdiction that is not expressly conferred. Without jurisdiction a court has no power to make one more step and where a court acts without jurisdiction, its proceedings are a nullity. Reliance is placed on The Supreme Court in Samuel Kamau Macharia & Another v Kenya Commercial Bank Ltd & 2 others [2012] eKLR and Owners of the Motor vessel "Lilian S" v Caltex Oil (Kenya) Ltd [1989] KLR.
- 28 That the reallocation of a matter from one magistrate to another of equal jurisdiction is not a mere clerical task; it has the effect of altering the judicial officer seized of a dispute and potentially impacts parties' rights. It is reiterated that Sections 17 and 18 of the *Civil Procedure Act* vest the power of transfer or withdrawal of suits squarely in the High Court. The Magistrates' Courts Act contains no express provision authorizing a magistrate to reallocate a matter to a colleague of equal rank, save where such reallocation is undertaken administratively by the presiding magistrate or court administrator, or by the Judiciary's internal case management guidelines.
- 29 While efficiency in court operations is a constitutional imperative under Article 159(2)(b), it cannot override express statutory provisions governing jurisdiction and transfer of cases. Reliance is placed in *Okoiti & 3 others v Anne Waiguru & 5 others* [2021] KLR, where it was held that an ultra vires act is laced with illegality and cannot be sanitized by considerations of expediency.
- 30 The respondent's submission were not on record as the time of preparing this ruling.

Analysis And Determination

- 31 I have keenly considered the application for transfer of the suit MCELC EO36 /2024 before Hon. Dr. D. N. Ogoti (CM) in Bondo Law Courts and for me the main issue that commends determination is whether the application has merit. Essentially the court will be asking itself if there is any justification to transfer the matter from Bondo Law Courts for hearing and determination by the ELC.



- 32 The powers of the High Court and the ELC as a court of equal status to transfer cases from subordinate court to the High Court and vice versa 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 proceedings pending in any court subordinate to it, and therefore –
 - 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 From the above the court need not withdraw a suit filed in the subordinate court to itself. The High Court can still transfer it to another subordinate court competent to hear it.
- 34 The reasons raised for the prayer for the transfer of the suit is that the plaintiff had filed a suit in the subordinate court at Bondo which was heard by P. Nandi SRM which secretly made favorable orders for the plaintiff on the same subject matter South Sakwa/Barkowino/1408 and South Sakwa/Barkowino/9706 & 9707. The applicants are now apprehensive and skeptical that the same Magistrate Court cannot hear and determine the current case objectively as it may be influence by a previous judgement which is exparte and that Hon Ogoti has no jurisdiction to review or alter the reasoning of his brother Hon P. Nandi.
- 35 Noting the above contestations I therefore had to read the judgement delivered by Hon P. Nandi and the cause of action including the parties. But I must quickly observe that while the applicants state that the said judgement was secretly obtained, this is not an issue for consideration in determining the merits of the application for transfer herein. These are issues that can only be dealt with under an application within the said proceedings or on appeal to this court.
- 36 The question that arises is whether there is any issue in the present suit at Bondo that the trial court cannot resolve. It has been stated that the said court lacks jurisdiction. In my view the suit as filed is competently before the CM Court at Bondo. I say so based on the cause of action. A close look at the judgement of Hon Nandi it clearly reveals that the main issue was the power of the Land Registrar to order and recall title for cancellation and which the learned trial court (Nandi) found in the negative. The allegations raised were all purely against the land registrar and not the defendants in the present suit. In my view the fact that a judgement was delivered by a court in Bondo with regard to the same suit property does not mean that the trial court at Bondo cannot entertain a dispute on the same property but which will be subject to the doctrine of res judicata.
- 37 But having observed the foregoing I have noted that the Bondo Sub County Land Registrar has been enjoined as an Interested Party and there is also a third party who has been joined to the proceedings being sought to be transferred. The dispute has now mutated into an ownership dispute



with allegations of fraud being raised in the transfer of the suit property to the plaintiffs and new parties being enjoined. I would still not find that the Magistrates Court at Bondo would not be seized of jurisdiction to determine the dispute.

- 38 The only challenge I see is that I have noted at paragraph 20 of the reply to Third Party's Statement of Defence & Defence to 3rd Partys Counterclaim alludes to the finality of the court decision in Bondo MC ELC Case No. E032 of 2024. Further the said judgement is listed in the Plaintiff supplementary List of Documents dated 8/5/2025 as one of the documents that Plaintiff intends to adduce as her evidence in court. Based on this then there could be some discomfort in the CM court reviewing this specific piece of evidence.
- 39 I think based on the above this court is persuaded there is justification of transferring the suit ELC CASE NO E036 OF 2024 Simelia Anyango Onyando v Zakayo Ayuko & Moses Ochieng Auma from Bondo Law Courts to the Environment and Land Court Siaya for hearing and determination.
- 40 The upshot of the foregoing is that the application dated is 3/11/2025 allowed and costs shall abide the outcome of the main hearing.
- 41 The decision to transfer the matter shall not serve as bar for any party to apply on the plea of res - judicata.

DELIVERED AND DATED AT SIAYA THIS 12TH OF MAY 2026

HON. LADY JUSTICE A.E. DENA

JUDGE

12/05/2026

Ruling delivered virtually through Microsoft teams video Conferencing Platform in the presence of:

Mr. Lawi Oguttu for Applicant

Mr. Moses Orengo for Respondent

Court Assistant: Biud Wekesa

