



**Tuwei v Chumba (Environment and Land Miscellaneous Application
E014 of 2025) [2025] KEELC 5565 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5565 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2025
GMA ONGONDO, J
JULY 24, 2025**

BETWEEN

PETER KIMUTAI TUWEI APPLICANT

AND

KIRWA SIGONG CHUMBA RESPONDENT

RULING

1. This ruling is in respect of the applicant's Notice of Motion application dated 24th February 2025 by Rotich, Langat and Partners Advocates for the applicant generated under Sections 1A, 1B, 3, 3A and 18 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya 2010 as read with Order 51 Rule 1 of the Civil Procedure Rules, 2010 for orders infra:
 - a. Spent
 - b. That this Honourable Court be pleased to issue orders transferring the cause Peter Kimutai Tuwei -vs- Kirwa Sigong Chumba filed in the Chief Magistrate's Court at Kapsabet to the Principal Magistrate's Court in Tinderet to allow fair, just, equitable and expeditious disposition of the cause.
 - c. That costs of this application be provided for in the cause.
2. The application is based on seven grounds which include:
 - a. That the applicant is the plaintiff in Kapsabet Chief Magistrate's Court Environment and Land Case No. E007 of 2025: Peter Kimutai Tuwei -vs- Kirwa Sigong Chumba filed in the Chief Magistrate's Court at Kapsabet (the Kapsabet matter).
 - b. That the subject suit land parcel is Mogobich/Siret Block 1 Cheptabach/33 situated near Tinderet and the parties hail from Nandi Hills near Tinderet hence, the court that has



jurisdiction to hear and determine the case is Tinderet Principal Magistrate's Court according to the provisions of Sections 12 and 15 of the Civil Procedure Act Chapter 21 Laws of Kenya.

- c. That this application has been brought timely and expeditiously in the interest of justice and fairness.
 - d. That the transfer sought will save both the court's time and that of the parties to the suit.
 - e. That the respondent will not be prejudiced if the said orders are granted since they will have a chance to be heard fairly on merit.
3. Further, the application is anchored on the applicant's supporting affidavit of seven paragraphs sworn on even date, alongside the annexed document marked as PKT-1 which is: a copy of the title deed of the suit land reference number Mogobich/Siret Block 1/Cheptabach/33. The applicant reiterated the grounds of the application and emphasized that the respondent will not be prejudiced if the instant application is allowed.
 4. The respondent through Cheron Jekosgey and Company Advocates, opposed the application by way of a Replying Affidavit sworn on 5th May 2025. He averred that the instant applicant is misconceived, frivolous and vexatious. That his name is Kirwa Keny Chumba and not Kirwa Sigong Chumba, as indicated in the plaint and that he is the registered owner of the suit land herein.
 5. Also, the applicant stated that the suit land is located within Nandi Hills Sub-County and nearer to Kapsabet Law Courts where the Kapsabet matter is filed. That Tinderet Law Courts only handles matters within Tinderet Sub County and not Nandi Hills Sub County. That both parties reside near the suit land hence, it is easier to access Kapsabet Law Courts as opposed to Tinderet Law Courts. That the application has been made in bad faith.
 6. On 7th May 2025, the court ordered and directed that the Application be heard by way of written submissions in the spirit of Article 159 (2) (b) of the Constitution of Kenya, 2010 (The Constitution herein).
 7. Accordingly, the applicant's counsel filed submissions dated 19th May 2025 and cited Sections 12 and 13 of the Civil Procedure Act, Chapter 21 Laws of Kenya (The CPA herein). Counsel stated that Tinderet Law Courts is well within the Lands Registry where the suit land is registered. That the Principal Magistrate's Court at Tinderet would be properly seized of the matter since the subject matter's worth is within its pecuniary jurisdiction. That the Kapsabet matter has never been listed for pre-trial due to backlog of cases. That therefore, allowing the transfer of the suit to Tinderet will ensure its expeditious disposal in line with the provisions of the CPA. That the instant application has been brought in good faith and is aimed at saving both parties time, in the interest of justice and fairness.
 8. On his part, the respondent's counsel filed submissions dated 28th May 2025 and identified a single issue for determination thus: which court has jurisdiction to hear and determine this suit? Learned Counsel submitted, inter alia, that the suit land is situated within Nandi Hills Sub County where the respondent also resides, which is nearer to Kapsabet Law Courts than Tinderet Law Courts. That transferring the matter to Tinderet Law Courts will hinder the respondent from attending court and occasion him financial constraint. That Kapsabet Law Courts has territorial jurisdiction to hear and determine the suit and any transfer of the same shall contravene Section 12 of the CPA (supra). Thus, Counsel urged the court to dismiss the application with costs to the respondent. Reliance was placed on the case of Peter Lai Muthoka vs Standard Group (2017) eKLR, to reinforce the submissions.
 9. I have duly considered the application, the response thereto and the parties' respective submissions. Therefore, the issues that arise for determination are;



- a. whether the application is merited for granting the orders sought therein.
 - b. what orders can be issued in the ends of justice herein?
10. In respect of the first issue, Section 12 of the CPA provides that a suit ought to be instituted where the subject matter is situated and the same provides thus:

Subject to the pecuniary or other limitations prescribed by any law, suits—

- a. for the recovery of immovable property, with or without rent or profits;
- b. for the partition of immovable property;
- c. for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- d. for the determination of any other right to or interest in immovable property;
- e. for compensation for wrong to immovable property;
- f. for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.

11. Section 18 of the CPA empowers the High Court (read this court under Article 162 (2) (b) of *the Constitution*) to transfer a case from one subordinate Court to the other; see also *Kithita Ngeana v Mwaniki Kisume* (2018) eKLR.
12. In the case of *David Kabungu vs Zikarenga and 4 others* Kampala HCCS No. 36 of the 1995, the Court held in part that;

“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 motto 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 expense and difficulties of the trial would be so great as to lead to injustice... 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...” (Emphasis laid)



13. It is noteworthy that pursuant to Section 11 of the CPA, a suit ought to be entertained in a court of the lowest grade that is competent to try it.
14. Besides the above guidelines, Courts are further required to consider the real motive or character for transfer of a case from one Court to another. In the instant case, the Applicant is relying on the ground that the subject suit land parcel is situated near Tinderet and the parties hail from Nandi Hills near Tinderet. Further, in his submissions, Learned Counsel for the applicant stated that the suit filed at Kapsabet Chief Magistrate's Court has never been listed for pre-trial due to backlog of cases at that court thus, allowing the transfer of the same to Tinderet will ensure its expeditious disposal.
15. Indeed, case backlog undermines timely delivery of justice and hinders access to justice as stipulated under Article 48 of *the Constitution*. Clearly, transferring the suit from Kapsabet Law Courts to Tinderet Law Courts shall not only aid in the decongestion of Kapsabet Chief Magistrates' Court , but will also result into its timely hearing and determination in line with Article 159 (2) (b) of *the Constitution*.
16. In the end, I find merit in the Applicant's Notice of Motion dated 24th February 2025 which is hereby allowed with the result that Kapsabet Chief Magistrate's Environment and Land Case No. E007 of 2025 be transferred to Tinderet Law Courts for hearing and determination.
17. Costs to be in the cause.
18. Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAPSABET THIS 24TH DAY OF JULY 2025.

G.M.A ONG'ONDO

JUDGE

Present

1. Ms Koech for the Respondent
2. Walter, court assistant

