



Kiberenge v Kiberenge (Sued as the Legal Administrator and Personal Representatives of the Estate of Wakweika Nakuya Wellington) & 7 others (Environment and Land Miscellaneous Case E013 of 2025) [2025] KEELC 5492 (KLR) (23 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5492 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS CASE E013 OF 2025**

**CK NZILI, J
JULY 23, 2025**

BETWEEN

JULIETA NANJALA KIBERENGE APPLICANT

AND

JULIETA NANJALA KIBERENGE (SUED AS THE LEGAL ADMINISTRATOR AND PERSONAL REPRESENTATIVES OF THE ESTATE OF WAKWEIKA NAKUYA WELLINGTON) 1ST RESPONDENT

AGNES WAKWEIKA 2ND RESPONDENT

HELLEN WAKWEIKA 3RD RESPONDENT

MOSES WALELA LUNANI 4TH RESPONDENT

ELKANA LUNANI WALELA (SUED AS THE LEGAL ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTTAE OF SHAPHAN LENANI WALELA) 5TH RESPONDENT

MILLY KHAYANGA LUNANI 6TH RESPONDENT

THE LAND REGISTRAR, TRANS-NZOIA COUNTY 7TH RESPONDENT

ATTORNEY GENERAL 8TH RESPONDENT

RULING

1. Sections 17 of 18 of the *Civil Procedure Act* provide that the court, on its motion or that of a party, may withdraw and transfer suits from one subordinate court to another, or to itself for hearing and disposal. Sections 11 and 15 of the *Civil Procedure Act* provide for the factors governing the place of suing and filing of a suit.



2. The discretion on where to file a suit rests with the plaintiff. It must be guided by the considerations set by the law. The primary consideration has to be the jurisdiction of the court to hear and determine the suit.
3. In *Kenya Medical Research Institute -vs- Davy K. Koech* [2018] eKLR, the Court of Appeal cited *Kagenyi -vs- Musiramano & Anor* [1968] EA 43, that the court has to consider the issue of jurisdiction before an application for transfer is determined. The court also said that Article 159(2) of *the Constitution* must also be taken into account. In *Equity Bank Ltd -vs- Bruce Mutie Mutuku T/A Diani Tour & Travel* [2016] eKLR, the court held that only a competent suit can be transferred to another court. See also *Albert Chaurembo Mumba & Others -vs- Maurice Munyao & Others* [2019] eKLR.
4. Applying the case law on the application dated 14/4/2025, the respondents have filed a preliminary objection and grounds of opposition dated 18/6/2025, that there is nothing to transfer, since the suit was incompetent and a nullity ab initio.
5. The applicant, in his supporting affidavit sworn on 14/4/2025, attaches the pleadings at the lower court. The cause of action relates to seeking a declaration of parcel No. Matunda/Block 21/112, as held in trust. In the joint statement of defence dated 6/12/2022, the issue of jurisdiction was not raised.
6. Section 7(3) of the Magistrates Act grants the court powers to hear civil suits touching on land held under customary tenure. Section 26 of the *Environment and Land Court Act* allows magistrates, subject to Article 162(2) of *the Constitution*, as appointed by the Hon Chief Justice under Subsection (3), to deal with matters of a civil nature involving occupation and title to land, provided it is within their pecuniary jurisdiction.
7. In *Hassan Ali Joho & Another -vs- Suleiman Said Shabbal & Others* and in *Independent Electoral and Boundaries Commission -vs- Cheperenger & 2 others* [2018] KESC 46 (KLR), the court said that it is improper to resort to preliminary objections as a sword for winning a case, otherwise destined to be resolved judicially and on the merits.
8. In *Motor Vessel Lillian "S" -vs- Caltex Oil (K) Ltd* 1989 eKLR, the court said that preliminary issues must be raised at the earliest opportunity. The preliminary objection herein is lacking merit because of the alluded cause of action. I think there is no harm in transferring the suit. The cause of action as pleaded is more than just an issue of trust. It touches fraud and illegality.
9. The application is allowed with no order as to costs. The lower court file will be transferred to this court for hearing and disposal.
10. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 23RD DAY OF JULY 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Miss Keya for the Applicant present

Ngeywa for the 4th respondent present

No appearance for the rest of the respondents

