



**Kaarai v Njoki & 2 others (Environment and Land Appeal  
E001 of 2025) [2025] KEELC 5431 (KLR) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5431 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND APPEAL E001 OF 2025**

**MN GICHERU, J  
JULY 21, 2025**

**BETWEEN**

**PATRICK NDEI KAARA ..... APPELLANT**

**AND**

**CYPRIAN KAMAU NJOKI ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR KIRINYAGA ..... 2<sup>ND</sup> RESPONDENT**

**JANE NJERI NDEI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is on the notice of motion dated 28-2-2025. The motion which is by the 3<sup>rd</sup> Respondent is brought under Order 51 rule 1 of the Civil Procedure Rules, Section 13 of the [Environment and Land Court Act](#) and all other enabling provisions of law.

The motion seeks two orders.

- i. Transfer of the matter to the Environment and Land Court at Kerugoya for hearing and determination.
  - ii. The costs of the Application be provided for.
2. The motion is based on nine(4) grounds and is supported by an affidavit sworn by the 3<sup>rd</sup> Respondent which has one(1) annexure. In summary the Applicant states as follows. Firstly, this appeal arises from a decision of Kerugoya Chief Magistrates' Court case No. E074 of 2023. The Appeal should therefore have been filed in the ELC Kerugoya which has the territorial jurisdiction over the trial court. Secondly, that being the case, this case has been filed in this court irregularly. There is therefore need to have suit transferred to Kerugoya and it is in the interests of justice that this application be allowed.



3. The motion is opposed by the appellant who has sworn a replying affidavit dated 21-3-2025 in which he replies as follows.

One, the 3<sup>rd</sup> Respondent is a woman of great influence in Kirinyaga which she may use to influence the case like she did with the case in the lower court. Two, this court has territorial jurisdiction all over the Republic of Kenya and the appeal is therefore properly before this court. Finally, it is the Appellant's wish that the case be heard away from Kerugoya where he fears that he may not get justice.

4. Counsel for the parties filed written submissions dated 9<sup>th</sup> May 2025 and 19<sup>th</sup> May 2025 respectively. According to counsel for the 3<sup>rd</sup> Respondent both Section 3(4) of the *Environment and Land Court Act* and Rule 13 of the Practice Directions and Procedure Rules in ELC, 2025 provide that the jurisdiction to determine this appeal vests in the ELC Kerugoya and not in this court.

On the other hand, counsel for the appeal has relied on Article 165 (3) (a) of *the Constitution* of Kenya which provides that the High Court shall have unlimited original jurisdiction in criminal and civil cases.

5. I have carefully considered the motion in its entirety including the grounds, the affidavits and the law cited by the learned counsel for the parties. I find merit in the motion for the following reasons.
6. Firstly, Chief Magistrates' Court, Kerugoya is situated in Kirinyaga County and there is a Judge with concurrent jurisdiction to this court to deal with all appeals from the lower courts within Kirinyaga County. Such jurisdiction is conferred by Section 13(4) of the Environment and Land Court (*Act No. 19 of 2011*). It provides as follows .

“In addition to the matters referred to in subsection (1) and (2), the court shall exercise appellate jurisdiction over the decision of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the court.”

7. Secondly, this court is empowered by the above provision to preside over appeals emanating from lower courts within Murang'a County. This court does not ordinarily deal with appeals from the lower courts in Kirinyaga County. It will raise eyebrows if this court hears an appeal emanating from the Chief Magistrates' Court at Kerugoya or any other lower court within Kirinyaga County. It will look suspicious for me to deal with this case when there is a competent court in Kerugoya to deal with it. The Appellant will be accused of forum shopping and I will be accused of condoning it. Forum shopping is recognized as a form of corruption. It will be highly irregular for me to proceed to hear this matter.
8. Thirdly, if the Appellant has good reasons for fearing that justice may not be done in his case, let him make an appropriate application before the ELC Kerugoya and let that court consider the application if it is ever made.
9. For the above state reasons, I find merit in the motion dated 28-2-2025. I order as follows.
  - i. This appeal is hereby transferred to ELC Kerugoya for hearing and determination.
  - ii. Costs to the 3<sup>rd</sup> Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 21<sup>ST</sup> DAY OF JULY, 2025.**

**M.N. GICHERU JUDGE.**

Delivered online in the presence of; -



Court Assistant – Mwangi Njonjo

Appellant’s Counsel – Mr Karuga Wandai

3<sup>rd</sup> Respondent’s Counsel – Mr Maina Kagio

