



**Jepkemboi v Chirchir & 2 others (Environment & Land Case  
E013 of 2024) [2025] KEELC 654 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 654 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND CASE E013 OF 2024  
GMA ONGONDO, J  
FEBRUARY 18, 2025**

**BETWEEN**

**LYDIA JEPKEMBOI ..... PLAINTIFF**

**AND**

**SHADRACK KIPKURUI CHIRCHIR ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH KIPKOECH MUTAI ..... 2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR NANDI COUNTY ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The instant suit has come up for pretrial directions today and counsel for the respective parties are present before the court.
2. At the outset, I have disclosed my close familial relationship with Mr David Momanyi Gichana learned counsel for the plaintiff. He is my first cousin. The disclosure is made in the spirit of, inter alia, Articles 10 (a) and (c), 35 (1) (b) and 50 (1) of *the Constitution* of Kenya 2010. The said
3. Mr GIchana has affirmed his relationship with me. In the circumstances, he has expressed his intention to hand over the file to another counsel.
4. Mr D Tallam learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants termed the court's disclosure good. He proposed that in view of the value of the suit land measuring approximately one acre of land, this suit be transferred to Kapsabet Chief Magistrate's Court for hearing and determination.
5. Mr Mulongo instructed by Ruth Rop learned counsel for the Attorney General for the 3<sup>rd</sup> defendant stated that he had limited instructions in this matter. That however, let the court to give appropriate directions.



6. Learned counsel for the plaintiff informed the court that he has no valuation report regarding the suit land. That the suit can be transferred as proposed by learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
7. So, the issues that fall for determination at this stage relate to my recusal from this suit and transfer the same to another court of competent jurisdiction for hearing and determination.
8. It is noted that there is real danger of bias or impartiality if this suit proceeds before me. It is important that justice must be seen to be done; See *Galaxy Paints Company Ltd-vs-Falcon Guards Ltd* (1999) KLR.
9. It is noted that in the English case of *Metropolitan Properties (Fg-C) Ltd-vs-Lennon and others* (1969) 1 QB 577, the court laid down the threshold for recusal thus;
 

‘.....if reasonable man would reasonably suspect bias.....’
10. In the case of *Jasbir Rai & 3 others-vs-Tarlochan Singh Rai and 4 others* (2013) eKLR, the Supreme Court of the Republic of Kenya held that recusal would apply if there is reasonable suspicion that a fair trial was not possible.
11. The plaintiff through Momanyi Gichana and Company Advocates, commenced this suit by way of a plaint dated 3<sup>rd</sup> July 202 claiming that there is fraud, trespass and nuisance in respect of the suit land. He has sought, inter alia;
  - a. A declaration that the Plaintiff is the beneficial and legal owner of her specified and identified portion of that parcel of land measuring 0.7. Acres in NANDI/KAMOBO /498 as had been originally agreed between her and the 1<sup>st</sup> Defendant late father.
  - b. The Honourable, Court be pleased to order the Land Registrar Nandi County to be compelled to transfer and register in the all that parcel of land known as NANDI/KAMOBO/7792 into the name of the Plaintiff.
12. Section 9 (a) of the *Magistrates’ Courts Act*, 2015 and section 26 of the *Environment and Land Court Act* 2015 (2011) empower Magistrates’ Courts to hear and determine disputes relating to environment and the use and occupation of, and title to land.
13. By the nature of the subject matter as even discerned in paragraph 11 hereinabove, the Chief Magistrate’s court at Kapsabet has jurisdiction over this suit.
14. Moreover, this court is guided by sections 1A, 1B, 3, 3A, 5, 11, 15, 18 of the *Civil Procedure Act* Chapter 21 Laws of Kenya and sections 3 and of the *Environment and Land Court Act* 2015 (2011) herein.
15. A fortiori, I recuse myself from this suit and transfer it to Kapsabet Chief Magistrate’s court for hearing and determination.
16. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 18<sup>TH</sup> DAY OF FEBRUARY 2025.**

**HON. GEORGE M A ONGONDO**

**JUDGE**

PRESENT;

Mr M. Gichana learned counsel for the plaintiff

Mr D Tallam learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants



Mr Mulongo learned counsel for the 3<sup>rd</sup> defendant

Walter, court assistant

