



**Ogonda & 26 others v Attorney General & 3 others (Petition
E141 of 2021) [2022] KEELRC 13017 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13017 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E141 OF 2021**

MN NDUMA, J

OCTOBER 27, 2022

IN THE MATTER OF ARTICLES 22(1) AND 3 OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS UNDER ARTICLES 2(1), 39(1), 19, 20, 27, 28 AND 41 OF THE CONSTITUTION**

AND

IN THE MATTER OF THE PUBLIC SERVICE COMMISSION ACT NO. 10 OF 2017

BETWEEN

SYLVIA AKOTH OGONDA 1ST CLAIMANT
WESLEY KIPRONO CHERUIYOT 2ND CLAIMANT
NAOMI CHEPLANGAT LANGAT 3RD CLAIMANT
JEPHINER NGASURA 4TH CLAIMANT
JANET AKUMU OJWANG' 5TH CLAIMANT
RONALD KIPKEMOI BETT 6TH CLAIMANT
JOB KEMBOY 7TH CLAIMANT
RUTH ANYANGO OMOLLO 8TH CLAIMANT
ERIC ODUOR OKECH 9TH CLAIMANT
OLIVIA ATIENO OWINO 10TH CLAIMANT
JACOB RACHUONYO 11TH CLAIMANT
SABANIA KITUR 12TH CLAIMANT
SAMMY KIPKOECH NGETICH 13TH CLAIMANT



JOHN ROBERT OWUOUR	14 TH CLAIMANT
RUTH ANYANGO OKOTO	15 TH CLAIMANT
HENRY K TONUI	16 TH CLAIMANT
LAWRENCE PKETICH OYUGI	17 TH CLAIMANT
IRINE AWUOR	18 TH CLAIMANT
BENARD KIPLANGAT RONO	19 TH CLAIMANT
JAPHETH ONYANGO OGOGO	20 TH CLAIMANT
DICKSON OUMA ODUNDO	21 ST CLAIMANT
BERNARD JUMA NYAREM ODERO	22 ND CLAIMANT
BERNARD ODIWUOR ODONGO	23 RD CLAIMANT
JACK OLONGA'	24 TH CLAIMANT
HARRIET NATECHO	25 TH CLAIMANT
BERNARD W ODHIAMBO	26 TH CLAIMANT
EVANCE OCHIENG OLEWE	27 TH CLAIMANT

AND

ATTORNEY GENERAL	1 ST RESPONDENT
CABINET SECRETARY, MINISTRY OF EAST AFRICAN COMMUNITY (EAC) & REGIONAL DEVELOPMENT	2 ND RESPONDENT
LAKE BASIN DEVELOPMENT AUTHORITY	3 RD RESPONDENT
PUBLIC SERVICE COMMISSION	4 TH RESPONDENT

RULING

1. The 3rd respondent by an application dated March 3, 2022 prays that this suit be transferred from Employment and Labour Relations Court Nairobi to Employment and Labour Relations Court Kisumu on the grounds that the cause of action arose in Homa Bay County which falls under the jurisdiction of Employment and Labour Relations Court, Kisumu and not Nairobi. That the suit needs to be consolidated with Petition E003/2021 presently pending at Kisumu Employment and Labour Relations Court. That the two matters are similar and there is a risk of the two Courts giving contradictory orders.
2. The application is opposed vide a replying affidavit dated April 1, 2022 in which is deposed that the petitioners and the 1st, 2nd and 4th respondents are domiciled in Nairobi. That only the 3rd respondent is out of Nairobi.
3. That the Employment and Labour Relations Court Nairobi, has nationwide jurisdiction just as the Kisumu Court. That it is fair and just to have the matter heard and determined at Nairobi. That no justifiable cause to transfer matter to Kisumu has been disclosed. That it has not been demonstrated



that undue hardship will be occasioned to the 3rd respondent if the matter proceeds at Nairobi. That transfer will only cause further delay since parties have filed their responses to the petition.

4. That Employment and Labour Relations Court Judicial Review No. E003 of 2021 based at Kisumu is different from this matter and the two matters may proceed separately.
5. The applicant in reply states that the transfer would allow proper management of the two matters before Court. That the two cases have common issues in that the transfer of the funds sought include salaries claimed by the applicants in this suit.
6. Having considered the depositions and the submissions by the parties, the Court is satisfied that the petitioner herein worked for Kimira-Oluch Smallholder Farm Improvement Project (KOSFIP) which project is domiciled at Home Bay.
7. That the dispute revolves around the intended transfer of Kimira-Oluch Smallholder Farm Improvement Project (KOSFIP) to the 4th Respondent, Lake Basin Development Authority, whose sphere of operation is the Lake Victoria Basin in the Nyanza and Western Regions of Kenya.
8. The Court is satisfied that the suit is best handled by Employment and Labour Relations Court Kisumu for the said reasons and for the Employment and Labour Relations Court Kisumu to consider whether it is appropriate to consolidate this petition and Judicial Review E003 of 2021.
9. There is a danger of having contradictory decisions by the two Courts if this Court proceeds to determine this matter at Nairobi, without having considered whether or not both suits ought to be dealt with together.
10. The reasons above constitute justifiable cause to have this matter to be transferred to Kisumu Employment and Labour Relations Court.
11. The application is therefore granted and this petition is transferred to Kisumu Employment and Labour Relations Court with immediate effect. The Deputy Registrar Nairobi to action the transfer and notify the parties accordingly.

DATED AND DELIVERED (VIRTUALLY) AT NAIROBI THIS 27TH DAY OF OCTOBER, 2022

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Yogo for 3rd Respondent/Applicant

M/s Mwangi for 1st, 2nd and 4th Respondents

Mr. Murunga for the Petitioners

Ekale – Court Assistant

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