



**LWM v JSM (Miscellaneous Civil Application E071 of 2024)  
[2024] KEHC 14995 (KLR) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14995 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MISCELLANEOUS CIVIL APPLICATION E071 OF 2024  
LM NJUGUNA, J  
NOVEMBER 27, 2024**

**BETWEEN**

**LWM ..... APPLICANT**

**AND**

**JSM ..... RESPONDENT**

**RULING**

1. The applicant filed a notice of motion dated 12<sup>th</sup> September 2024, being supported by the grounds set out on its face and the facts deposed in the supporting affidavit thereof. The orders sought are as follows:
  1. Spent;
  2. That the honourable court be pleased to issue an order for stay of proceedings in Embu Magistrate’s Court Children Case No. E041 of 2024 pending hearing and determination of this application interparties;
  3. That the honourable court be pleased to issue an order of transfer of Embu Magistrate’s Court Children Case No. E041 of 2024 to Ruiru Magistrate’s Court for hearing and final determination;
  4. That the honourable court be pleased to vacate the order of the magistrate’s court issued on 16<sup>th</sup> August 2024 in Embu Magistrate’s Court Children Case No. E041 of 2024 requiring the minors to be produced before the court in Embu; and
  5. That the costs of this application be provided for.
2. The applicant deposed that she was married to the respondent until 2013 and their marriage was blessed with 2 issues. That in the course of their marriage, which has since been dissolved, they lived in Kiambu County, which is also where the applicant and her children live and attend school. That the



respondent filed Embu Magistrate's Court Children Case No. E041 of 2024 seeking shared custody of the children and the court ordered that the children appear before the court in Embu. That the applicant and the children will incur financial strain if they are to keep travelling back and forth for the case in Embu yet they reside in Kiambu county. That it is in the best interest of the children to have the case transferred to Ruiru Magistrate's court since that is where the children live and go to school.

3. Through his replying affidavit, the respondent stated that the only issue in contention is shared custody of the children. That the respondent is unrepresented and therefore, if the matter is transferred to Ruiru, he will incur costs of transport to attend court. That at the time of filing the suit, he did not know where the applicant and the children were located. He stated that since the Embu court has jurisdiction to determine the suit, there is no reason why it should be transferred.
4. The application was canvassed by way of written submissions.
5. The applicant submitted that transfer of the suit will be in the best interest of the children, which is a key component in a suit involving minors. She relied on section 15 of the *Civil Procedure Act* and the case of JM v. ANJN (2017) eKLR and argued that the suit must be instituted where the defendant can defend the suit without undue trouble. She also relied on section 8 of the *Children Act* and argued that the order requiring production of the children in court in Embu will inconvenience their education.
6. The issue for determination is whether the application has merit.
7. Section 18 of the *Civil Procedure Act* provides:-

“On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage-

- a. Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
  - b. Withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter-
    - i. Try or dispose of the same; or
    - ii. Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
    - iii. Retransfer the same for trial or disposal to the court from which it was withdrawn.
8. This provision states that the transfer of a suit may be ordered at any stage. In the present case, the trial court had entered ex-parte judgment but the said judgment was set aside. The application herein raises the issue of territorial jurisdiction since the children live and go to school in Kiambu county. That it would be expensive and cumbersome to require the suit to continue in Embu, especially in light of the order that the children appear in court. Section 15 of the *Civil Procedure Act* establishes territorial jurisdiction as follows:

“Subject to the limitations aforesaid every suit shall be instituted in a court within the local limits of whose jurisdiction-



- a. The defendant or each of the defendants at the time of the commencement of the suit actually and voluntarily resides or carries on business, or personally works for gain; or
- b. Any of the defendants at the time of the commencement of the suit actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
- c. The cause of action, wholly or in part arises.

9. In the case of *Julius Lekuruito & Another vs Nottingham Mwangi & Another* (2018) eKLR, the court held:-

“Under Section 17 and 18 of the Act, upon an application by a party, or on its own motion, the High Court may transfer the suit to another subordinate court with territorial jurisdiction, when justice of the case demands such action.”

(see also the case of *Waweru v. Prime Auto Solution Limited* (2024) eKLR)

- 10. In Embu Magistrate’s Court Children Case No. E041 of 2024, the applicant herein is the defendant, therefore the law favours her. The respondent herein stated that at the time of instituting the suit, he did not know the location of the applicant and the children. Luckily, this court has been given an opportunity to remedy the situation through determining the application herein. It is therefore prudent to have the matter transferred to Ruiru Magistrate’s court as prayed. Having determined the issue of transfer, it follows that the other order sought ought to be granted in order to enable transition of the case to the next court.
- 11. Therefore, I find that the application has merit and the same is hereby allowed. Prayers (2), (3) and (4) of the application are granted as prayed. There shall be no order as to costs.
- 12. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**L. NJUGUNA  
JUDGE**

..... for the Applicant

.....for the Respondent

