



REPUBLIC OF KENYA



KENYA LAW
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**AM v MNN (Miscellaneous Civil Case E082 of 2022)
[2023] KEHC 323 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 323 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL CASE E082 OF 2022
TW CHERERE, J
JANUARY 26, 2023**

BETWEEN

AM APPLICANT

AND

MNN RESPONDENT

RULING

1. By a notice of motion dated filed December 28, 2022 and filed on December 28, 2022, applicant prays that:
 1. Stay of proceedings in Tononoka Children’s Case No E516 of 2022 pending the hearing Meru Children’s Case No E051 of 2022
 2. Transfer of Tononoka Children’s Case No E516 of 2022 to Meru for hearing and determination
 3. Costs provided for
2. The application is based on grounds among others that Meru Children’s Case No E051 of 2022 was filed before Tononoka Children’s Case No E516 of 2022 and the child the subject matter of both suits resides in Meru with the applicant. The application is supported by an affidavit sworn by the applicant on December 28, 2022 in which he reiterates the grounds on the face of the application. Annexed to the affidavit are pleadings filed in Meru Children’s Case No E051 of 2022 and Tononoka Children’s Case No E516 of 2022 on December 14, 2022 and December 16, 2022 respectively and receipts in respect of the minor for payments made to C Primary and Nursery School in Meru.
3. The application is opposed by way of a replying affidavit sworn by the respondent on January 13, 2023. respondent argues that although the respondent and the minor currently reside in Meru, the respondent lives and works for gain in Mombasa where the couple has a matrimonial home.



Analysis and determination

4. I have considered the affidavit evidence and submission filed on behalf of both parties. Section 15 of the *Civil Procedure Act* provides that:

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 (where there are more than one) 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 (where there are more than one) 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.
5. Since the applicant works and resides in Meru, the institution of the suit in Tononoko does not comply with section 15 above which seeks to prevent a situation where parties would go forum shopping thereby abusing the process of the court.
6. This court has power under section 18 of cap 21 to transfer a case from one subordinate court to another. In *GKK v ANK (2021) eKLR*, the court had opportunity to consider the provisions of section 18 of cap 21 as follows: -

“It was held in the Ugandan case of *David Kabungu v Zikarenga HCCC No 36 of 1995* that

Section 18 (1) (b) of the *Civil Procedure Act* gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. The burden lies on the applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is a relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction... It is well established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted.

7. Section 18 of the *Civil Procedure Act* provides that:
- (1) 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. Whereas the parties concede that they used to reside in Mombasa, they also acknowledge that the applicant and the minor currently reside in Meru.
9. From what is stated hereinabove, I find that applicant has made out a case for transfer. It is therefore hereby ordered:
 1. Tononoka Children’s Case No E516 of 2022 be and is hereby transferred to Meru Magistrate’s Court to be heard and determined together with Meru Children’s Case No E051 of 2022
 2. Each party shall bear its own costs

DATED IN MERU THIS 26TH DAY OF JANUARY 2023

WAMAE T W CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For applicant - Mrs Mutegi for Mutegi Mugambi & Co Advocates

For respondent – Ms Oweya for M Oweya & Co Advocates

