



REPUBLIC OF KENYA



KENYA LAW
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**Hassan v Yassin (Miscellaneous Civil Case E152 of 2022)
[2023] KEHC 1347 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1347 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL CASE E152 OF 2022
RB NGETICH, J
FEBRUARY 23, 2023**

BETWEEN

ABDIRASHID AHMED HASSAN APPLICANT

AND

NEERO AHMED YASSIN RESPONDENT

RULING

1. The application before the court for determination dated August 31, 2022 seeks the following orders: -
 - i. Spent
 - ii. Spent
 - iii. That this court to order a transfer of Nakuru Civil Case No 718 of 2022 from Nakuru Chief Magistrate's Court to Kiambu Chief Magistrate's Court.
 - iv. That fresh mention dates be set at Kiambu Chief Magistrate's Court registry subject to the court's diary.
 - v. Costs of the application be provided for.
2. The application is premised on the grounds that respondent filed a civil case Nakuru civil case No 718 of 2022 seeking the release of motor vehicle KDC 191Q which is being held at Kiamumbi police station; that the applicant is the registered owner of the said motor vehicle and there are two suits, criminal miscellaneous application No 346 and 357 both filed in Kiambu in respect to the said motor vehicle which have been consolidated. That all dealings and transactions relating to the dispute arose in Nairobi and Kiambu; and the applicants reside in Nairobi; litigating in Nakuru is an expensive affair.



3. The application by the respondent in Nakuru civil case No 718 of 2022, seeks to have motor vehicle KDC 191Q to be transferred and be held at Nakuru law court's parking. The applicant contend that the respondent filed the suit in bad faith in an attempt to punish the applicant.
4. The application is supported by the affidavit of Abdi Rashid Ahmed Hassan sworn on August 31, 2022 reiterating the grounds of the application.
5. In response to the application, the respondent Nero Ahmed Yassin filed his replying affidavit sworn on November 11, 2022. He disposes that the application is devoid of merit and made in bad faith with the sole purpose of delaying the suit in Nakuru Chief Magistrate's court; that the applicant has failed to demonstrate how the court lacks jurisdiction. That the cause of action arose in Nakuru as the subject motor vehicle was handed to the applicant in Nakuru as well as the deposit was paid in Nakuru and the applicant will suffer no prejudice if the suit proceeds for trial in Nakuru.
6. The application was heard through written submissions.

Applicant's Submissions

7. Counsel filed submissions dated November 16, 2022 and submitted that the applicant is entitled to the reliefs sought and cited the case of *David Kabungu v Zikarenga & 4 others*, Kampala HCCS No 36 of 1995 where the court held 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”
8. Counsel submitted that the applicant resides in Kiambu and the motor vehicle is being held at Kiamumbi police station in Kiambu county; that the applicant will incur a lot of costs litigating the matter in Nakuru as all transactions in respect to the suit motor vehicle occurred in Kiambu. The respondent's advocate is based in Nairobi thus it is convenient to have the suit transferred to Kiambu Chief Magistrate's Court. The respondent will not suffer prejudice if the suit is transferred to Kiambu.

Respondent's Submissions

9. Counsel filed submissions on December 14, 2022 and submitted that the transactions took place in Nakuru, the respondent and all his witnesses reside in Nakuru. If detention of the motor vehicle is based on the issue of ownership, the release of the motor vehicle from the police station will not be done until the determination on the issue of ownership; and as per the court guidelines, court attendance has been made easier due to the existence of virtual sessions.
10. Counsel submitted that Nakuru civil suit No 718 of 2022, should proceed to its logical conclusion to avoid further wastage of the subject motor vehicle as the applicant has failed to demonstrate the possibilities of hardship occasioned to him neither has he shown there will be miscarriage of justice; and urged the court to dismiss the application with costs.

Analysis And Determination

11. I have considered averments herein, submissions filed and pleadings in the lower court file and wish to consider whether the application is merited.



12. On jurisdiction to transfer suit from one subordinate court to another, section 18 of the *Civil Procedure Act* provides as follows: -

“Power of High Court to withdraw and transfer case instituted in subordinate court (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—
- c. Try or dispose of the same; or
- d. Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
- e. Retransfer the same for trial or disposal to the court from which it was withdrawn.
- f. Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”

13. The applicant must satisfy to the court the reasons for the transfer of the suit. The applicant submitted that the cause of action arose in Kiambu where the motor vehicle has been detained. On the other hand, the respondent submitted that the cause of action arose in Nakuru. The applicant submitted that the respondent’s advocate is situated in Nairobi and it is in the interest of justice to have the suit transferred to Kiambu Chief Magistrates Court, where two criminal suits have also been instituted by the parties.

14. According to the applicant, litigating in Nakuru will lead to escalation of costs. On the other hand, the respondent contends all his witnesses are based in Nakuru. The respondent has filed an application in Nakuru seeking to tow the subject motor vehicle from Kiambu police station within Kiambu county to Nakuru law court’s parking area. The applicant is apprehensive that towing the subject motor vehicle may interfere with the condition of the motor vehicle. The appellant is also apprehensive the safety of the motor vehicle may not be guaranteed if the same is parked within the court’s precinct.

15. Section 15 of the *Civil Procedure Act* provides 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 (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

16. Prior to filing the suit in Nakuru, both filed criminal applications in Kiambu seeking release of subject motor vehicle. The subject motor vehicle has been detained in Kiambu. The subject matter of the suit is in Kiambu. Applications filed by parties before filing the Nakuru suit were filed in Kiambu. The respondent's counsel has not disputed practicing in Kiambu together with the applicant's advocate.
17. From the foregoing, I am of the view that it would be proper to transfer the suit from Nakuru Chief Magistrate's Court to Kiambu Chief Magistrate's court for trial as the expeditious disposal of this suit will be achieved if the suit is transferred to Kiambu Chief Magistrate's Court.

Final Orders: -

18. The application dated August 31, 2022 is allowed.
19. I hereby transfer Nakuru Chief Magistrate's civil case No 718 of 2022 from Nakuru to Kiambu Chief Magistrate's Court for hearing and determination.
20. Costs in the cause.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 23RD DAY OF FEBRUARY, 2023

RACHEL NGETICH

JUDGE

In the presence of:

Martin – Court Assistant

Mr. Abed for Applicant

Mr. Matoke for Respondent

