



**Kanja v Githinji & 4 others (Miscellaneous Civil Application  
E150 of 2022) [2023] KEHC 2382 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2382 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CIVIL APPLICATION E150 OF 2022**

**OA SEWE, J  
MARCH 24, 2023**

**BETWEEN**

**NANCY AGNES KANJA ..... APPLICANT**

**AND**

**ELIZABETH WAMBUI GITHINJI ..... 1<sup>ST</sup> RESPONDENT**

**ELIMAH SOLUTIONS COMPANY LTD ..... 2<sup>ND</sup> RESPONDENT**

**SIDIAN BANK LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**MUMU AUCTIONEERS ..... 4<sup>TH</sup> RESPONDENT**

**HUSSEIN HASSAN DIISOW ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant approached the court *vide* her notice of motion dated July 28, 2022 for orders that the court be pleased to issue orders redirecting Mombasa Chief Magistrates civil case No 396A of 2022 back to the High Court and to reinstate it for hearing and determination as High Court civil case No E90 of 2021. The application was brought under sections 1A, 1B, 3, 3A and 63(e) of the [Civil Procedure Act](#), chapter 21 of the Laws of Kenya, and order 51 rule 1 of the [Civil Procedure Rules](#). The applicant also relied on article 159 of the [Constitution](#) as well as section 2 of the [Partnership Act](#), chapter 29 of the Laws of Kenya.
2. The application was premised on the grounds that the lower court would only have jurisdiction in partnership disputes where the value of the subject matter does not exceed Kshs 50,000/=. In the supporting affidavit sworn by Mr Joseph Makori, it was deposed, at paragraph 4 thereof that the value of the subject matter herein is Kshs 12,000,000/=; and therefore that it is in the interest of justice for the suit to be transferred back to the High Court for hearing and determination.



3. On behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents, grounds of opposition were filed herein on August 22, 2022 by their counsel, Mr Okwaro. According to him, the application is wholly devoid of merit in so far as it is based on grounds yet to be proved. The 1<sup>st</sup> and 2<sup>nd</sup> respondents averred that the agreement relied on by the application was signed only by the 1<sup>st</sup> respondent and cannot qualify as a partnership agreement. Thus, they asserted that the application is grounded on a flawed interpretation of the applicable statutes and case law. It was further the contention of the 1<sup>st</sup> and 2<sup>nd</sup> respondents that for purposes of section 2 of the [Partnership Act](#), the gross value of partnership assets beyond which the High Court would have jurisdiction is now Kshs 300,000/= and not Kshs 50,000/= as purported by the applicant. Thus, they prayed for the dismissal of the instant application with costs.
4. The application was urged by way of written submissions. Counsel for the applicant filed his written submissions on October 25, 2022 and submitted that the order for transfer of the suit to the Chief Magistrate’s Court was erroneously made; and that since then, the matter has stalled before the lower court for lack of jurisdiction. There appears to be no written submissions by the respondents, as there is no such document on the file.
5. Be that as it may, I have perused and considered the averments in the supporting affidavit as well as the grounds of opposition proffered by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. I have also called for the lower court matter for perusal and confirmed that, before the order for transfer was made, the court accorded the parties a hearing on the proposed transfer and no issue of jurisdiction was raised at that point in time. It was then not conceded from the pleadings that the dispute is in respect of the alleged partnership. Indeed, counsel for the respondents maintains that stance.
6. The court has powers under section 18(1) of the [Civil Procedure Act](#) to make an order for the transfer of a suit back to itself for hearing and determination. It 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.
7. In the premises, it is my finding that the justice of the case requires that the suit that has stalled before the lower court be retransferred back to the High Court for hearing and final determination. Accordingly, the application dated July 28, 2022 is hereby allowed and orders granted as hereunder:



- (a) That Mombasa CMCC No 396A of 2022 be and is hereby retransferred back to the High Court for hearing and determination, to be reinstated as High Court civil case No E90 of 2021.
- (b) Costs of the application to be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 24<sup>TH</sup> DAY OF MARCH  
2023**

**OLGA SEWE**

**JUDGE**

