



**Mutoko v Muiruri (Civil Miscellaneous Application E065 of 2023)
[2023] KEHC 19119 (KLR) (Civ) (27 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19119 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL MISCELLANEOUS APPLICATION E065 OF 2023

AN ONGERI, J

JUNE 27, 2023

BETWEEN

FELIX WANYAMA MUTOKO PLAINTIFF

AND

CHARLES MUIRURI DEFENDANT

RULING

1. The application coming for consideration in this ruling is dated 6/2/2023 seeking the transfer of CMCC 3934 of 2021 (Felix Mutoko vs Charles Muiruri) from the Chief Magistrate's Court to the Small Claims Court.
2. The application is based on the grounds that the matter is relatively simple being a claim on liabilities in tort in respect of motor vehicle registration no KCV 699Z which was involved in an accident with motor vehicle registration no KCM 566F on November 2, 2020.
3. The application is supported by the affidavit of Philip Matata sworn on 6/2/2023 in which it is deponed that the plaintiff by way of plaint filed MCCC E934/2021 Felix Wanyama Mutoko v Charles Muiruri before the Chief Magistrates Court at Milimani on February 8, 2021. The suit involves a claim for liability in respect of damage on the plaintiff's motor vehicle registration No KCV 699Z by the defendant's motor vehicle registration No KCM 596F on November 2, 2020.
4. He indicated that the plaintiff claims special damages and despite the straightforward nature of the matter, the case is yet to be concluded because of the congested diary in the magistrates' court. In fact, the first hearing of the matter is yet to take place. The plaintiff is apprehensive that he may have to wait long before he receives compensation for the amount of money used to repair his vehicle if the matter is handled in the Chief Magistrates Court.



5. The respondent filed grounds of opposition dated 22/3/2023 stating that Section 7 of the *Magistrates Court Act* clothes the Chief Magistrate Court with jurisdiction and pretrial directions have already taken place in the Chief Magistrate Court at Milimani. That the application therefore ought to be dismissed with costs to the respondent.
6. The parties filed written submissions Plaintiff submitted that section 34 of the *Small Claims Court* encourages speedy disposal of suits and demands that matter be concluded within 60 days. That is clear from the court records that the matter has not been heard despite it being a straightforward and having been filed in 2021.
7. That it defeats logic that a party would oppose an avenue that would speed the disposal of suits without providing any cogent reason for the application. So, the only logical conclusion is that the respondent's action is that they want to delay the resolution of the case. The respondent has not been attending court in fact, they failed to attend court when the matter was brought for mention to confirm a hearing date and despite being served with a hearing notice.
8. The defendant requested that the applicants enter a consent and transfer the matter to another forum that would expedite the matter but failed to sign the consent after the applicants signed their part. That finally this court ought to grant the orders as the respondents will not incur any costs in having the matter transferred.
9. The defendant in his submissions argued that Section 7 of the *magistrate* clothes the Magistrate court with jurisdiction of the subject matter since the subject matter of the lower court is below Kshs 20,000,000. Section 7 provides;

"Civil jurisdiction of a magistrate's court

- (1) A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed —
 - (a) twenty million shillings, where the court is presided over by a chief magistrate;
 - (b) fifteen million shillings, where the court is presided over by a senior principal magistrate;
 - (c) ten million shillings, where the court is presided over by a principal magistrate;
 - (d) seven million shillings, where the court is presided over by a senior resident magistrate; or
 - (e) five million shillings, where the court is presided over by a resident magistrate."
10. The sole issue for determination is whether this case should be transferred to the Small Claims Court for determination.
11. The law requires that a matter should be heard in the court with the lowest jurisdiction competent to try it.
12. The applicant is seeking special damages of kshs 218,000/= which is within the pecuniary jurisdiction of the Small Claims Court.



13. The case has not yet been heard in the Chief Magistrates Court and I find that the application for transfer of this case to the Small Claims Court is merited.
14. I allow the application dated 6/2/2023 and direct that the case be transferred to the Small Claims Court forthwith for determination.
15. Each party to bear its own costs for this application.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
27TH DAY OF JUNE, 2023.**

A. N. ONGERI

JUDGE

