



**JNW v PMM (Miscellaneous Application 18 of 2020)
[2023] KEHC 22089 (KLR) (Family) (26 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 22089 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION 18 OF 2020**

**EKO OGOLA, J
JUNE 26, 2023**

BETWEEN

JNW APPLICANT

AND

PMM RESPONDENT

RULING

1. The Application before me is dated July 30, 2020. The Applicant prays for the following:-
 - a. That service of the Application be dispensed with in the first instance.
 - b. That this honorable court be pleased to transfer Nakuru Children’s case no 148 of 2018 to the Nairobi Children’s Court at Milimani Law Courts.
 - c. That the Court do make such orders or further orders as it may deem fair and just in the interest of justice and in the best interest of the child.

2. This Application is based on the grounds set therein and the Supporting Affidavit of JNW. It is averred that the Applicant and the minor herein have since relocated from Nakuru County to Nairobi County. The Applicant further deposed that Judgment over the Children’s case in Nakuru was pronounced but she has been unable to execute the same because she has been unable to trace the respondent. She added that the execution of the judgment can only be done if the Nakuru Children’s case is transferred to Children’s Court at Milimani.

3. The Respondent opposed the Application vide a Replying Affidavit dated May 30, 2020. He deposed that the he has complied with the judgment of the trial court in Nakuru Children’s Court. He annexed Mpesa Statements as proof that he has remitted maintenance costs to the Applicant. He further enrolled the minor in a comprehensive Civil Servant Medical Cover. He has annexed a copy of the



NHIF data summary. It is for these reasons that the Respondent maintains that he is in compliance with the court's orders. Therefore, there is no issue pending before the court that requires for the file to be transferred from Nakuru children's court to Milimani Children's Court.

4. The Respondent through his Advocate Ms. Masati filed their written Submissions dated December 19, 2022. Counsel submitted that judgment on the Nakuru Children's case was delivered and the Respondent was ordered to provide for the education and all school-related expenses, medical expenses of the minor, and to further remit Kshs 4,000 to the Applicant as maintenance. Counsel submitted that the respondent has complied with the Court Order. Therefore, there is no issue pending before the trial court that can be transferred. To buttress this argument, counsel submitted that Section 18 of the *Civil Procedure Act* does not envisage transferring of determined suits, but only pending suits. Counsel also cited the case of *Zacharia Otel Wamalwa vs Zakayo Wasike* (2020) eKLR and the case of *Naibei Chepkuroop & 4 others vs Wekesa Erapa* (2004) eKLR. Counsel submitted that the respondent has annexed evidence of his compliance with the judgment and in case of contempt, the trial court in Nakuru has powers to punish the same.
5. On the issue of costs, it was submitted that under Section 27 of the *Civil Procedure Act*, the costs should be awarded to the respondent.

Determination

6. I have considered the Application, the Affidavits on record and the submissions of counsel. The jurisdiction of the High Court to transfer suits from one Court to another is provided under Section 18 (1) of the *Civil Procedure Act* which states as follows-

- “(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.”

7. So, can a case that has been heard and determined be transferred? The law under section 18 of the *Civil Procedure Act* does not envisage a suit which has been heard and determined to be transferred. The Applicant's argument is that the case should be transferred to Nairobi for ease of execution. There is no evidence on record to show that the Respondent has failed to comply with the Court's judgment. I agree with Ms Masati's submissions, that in the event that the Respondent stops complying with the Court's Orders, the Children's Court in Nakuru is armed with jurisdiction under Section 10 of the *Magistrates' Act* to punish for contempt of court's orders. This Contempt Application can be heard virtually and orders can be executed countrywide. Further to this, the suit before the trial Court in



Nakuru has gone full circle and judgment delivered. Any Application that is to be filed post-judgment is suitable to be heard and determine by the Magistrate who passed the said judgment. Therefore, the Applicant and the minor will not be prejudiced, if the Nakuru Children's case no 148 of 2018 is not transferred to Children's Court at Milimani.

8. From the foregoing, the Application dated January 30, 2020 lacks merit and is dismissed with costs to the Respondent.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JUNE 2023

E.K. OGOLA

JUDGE

In the presence of:

Mr. Paul Muchemi for the Applicant

Ms. Mukira for the Respondent

