



REPUBLIC OF KENYA



**KENYA LAW**

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**JG v PM (Civil Appeal E0162 of 2021) [2022] KEHC 15518 (KLR) (21 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15518 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E0162 OF 2021  
TW CHERERE, J  
NOVEMBER 21, 2022**

**BETWEEN**

**JG ..... APPELLANT**

**AND**

**PM ..... RESPONDENT**

*(Being an appeal from the decision of the Githongo Children's case No. E023 OF 2021 by Hon. E.W NDEGWA (RM) on 24th November, 2021)*

**RULING**

1. The appellant *vide* a plaint dated October 27, 2021 instituted Githongo children's case No E023/2021 against her estranged husband one PM, seeking several orders inter alia; both legal and actual custody, care and control of the children be given to the plaintiff herein; an order in the first instance of Kshs 10,000/- towards the child's upkeep for this month and subsequently Kshs 10,000/- to be paid on the 5<sup>th</sup> day of each succeeding month thereafter pending final resolution of this suit; school fees and school related expenses for the minor; costs of this suit and any other relief the court deems fit to grant.
2. Simultaneously with the plaint, appellant filed a notice of motion dated October 27, 2021 seeking similar orders to the in the plaint. In the body of the plaint and in the affidavit in support of notice of motion, appellant averred that she and respondent were blessed with three children but were separated in September, 2021. appellant sought custody and maintenance of the children.
3. Respondent opposed the application by way of a replying affidavit sworn on November 8, 2020. He conceded he was separated from appellant with whom they were blessed with three children. He averred that appellant had taken away two of the school they attended in Nairobi and relocated to Meru. He prayed that the children be restored to his custody so that they can continue with their education and that the matter be transferred to Kiambu for the reason that he resides in Kiambu and works in Nairobi.



4. By a ruling dated November 24, 2021, the trial court made a finding that it did not have territorial jurisdiction and directed that the matter be transferred to Kiambu.
5. appellant being dissatisfied with the above decision hereby appeals on grounds that:
  - a. The learned trial magistrate erred in law and in fact by ordering that the case to be transferred to Kiambu law courts whereas he had no such jurisdiction.
  - b. The learned trial magistrate erred in law and in fact by failing to appreciate that the appellant and the Respondent had a matrimonial home in Meru hence occasioning a miscarriage of justice.
  - c. The learned trial magistrate's findings were contrary to the law and procedure hence occasioning miscarriage of justice.
6. On May 25, 2022, this court directed that the appeal was argued by way of written submission which appellant dutifully filed on July 17, 2022.

### **Analysis and determination**

7. 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.
8. It is not disputed that the respondent resides in Kiambu and works for gain in Nairobi. The suit therefore ought to have been instituted in Kiambu or Nairobi Children's court which are the courts within the local limits of whose jurisdiction respondent resides and works for gain respectively.
9. From the foregoing, I agree with the trial court's finding that it did not have the territorial jurisdiction to determine this matter. I echo Nyarangi JA in the case of *The Owners of the Motor Vessel Lilian 'S' v. Caltex Kenya Limited* (1989) KLR 1 that "..... jurisdiction is everything without it; a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction".
10. I have also considered the provisions of section 18 of the *Civil Procedure Act* and it is apparent that a subordinate court has no jurisdiction to transfer suits to either the subordinate court as happened in this case or to the High Court as I have seen it happening other suits.
11. I therefore agree with the appellant's contention that the order of transfer was made without jurisdiction. What the trial magistrate ought to have done was to make a finding that the court had no jurisdiction and leave it to the parties to move the High Court to transfer the matter to the appropriate court.



12. That is however water under the bridge. Githongo Children’s case No E023 of 2021 has already been transferred to Kiambu. It is therefore hereby ordered:

1. This appeal has no merit and it is dismissed
2. In upholding this court’s duty to a provide just, expeditious, proportionate and affordable disposal of cases, I find that it is in the best interests of the case that the trial magistrate’s order dated November 24, 2021 transferring Githongo Children’s case No E023 of 2021 to Kiambu be and is hereby validated.

**DATED IN MERU THIS 21<sup>ST</sup> DAY OF NOVEMBER 2022**

**T. W. CHERERE**

**JUDGE**

**Appearances**

Court Assistant - Morris Kinoti

For appellant - Present in person

For respndent – N/A for Gekonge & Associates Advocates

