



**Regus Kenya Limited & 2 others v Shariff & 79 others (Commercial Miscellaneous Application E242 of 2024) [2025] KEHC 4051 (KLR) (Commercial and Tax) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4051 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E242 OF 2024**

**MN MWANGI, J**

**MARCH 21, 2025**

**BETWEEN**

**REGUS KENYA LIMITED ..... 1<sup>ST</sup> APPLICANT**

**LANOR INTERNATIONAL LIMITED ..... 2<sup>ND</sup> APPLICANT**

**RBC (UPPERHILL) LIMITED ..... 3<sup>RD</sup> APPLICANT**

**AND**

**ABDALLA SHARIFF & 79 OTHERS & 79 OTHERS ..... RESPONDENT**

**RULING**

1. The applicants filed a Notice of Motion application dated 18<sup>th</sup> March 2024 pursuant to the provisions of Sections 1A, 1B, 3A & 18(1)(b) of the *Civil Procedure Act*, Sections 3, 12(1)(a) & 13(3) of the *Small Claims Court Act* and Order 51 Rule 1 of the Civil Procedure Rules, 2010. The applicants pray for orders that 80 matters pending before the Milimani Small Claims Court be withdrawn and thereafter this Court tries or disposes the said cases itself, transfers the said cases to a competent Court for trial or disposal, or re-transfers the cases to the Milimani Small Claims Court for trial or disposal.
2. The application is premised on the grounds on the face of the Motion, which is supported by an affidavit sworn on the same day by Mr. Henry Karanja, an Advocate of the High Court of Kenya and learned Counsel for the applicants. He averred that the applicants, as claimants, have 80 pending suits before the Milimani Small Claims Court. He deposed that the jurisdiction of the Small Claims Court to hear these cases has been contested by some respondents and in some instances, raised by the Courts suo moto, on the ground that the claims involve recovery of rental arrears.
3. Mr. Karanja claimed that the disputes in the pending suits arise from a Standard Licensing Agreement, which excludes tenancy interest hence they should be classified as breach of contract claims under



Section 12(1) of the *Small Claims Court Act*. He stated that conflicting Court rulings have led to some cases being struck out while others have proceeded to trial, thereby creating procedural and jurisdictional uncertainty. He contended that due to this inconsistency, the applicants face delays, financial strain, and legal uncertainty, necessitating a resolution on the proper forum to have the said matters heard.

4. In opposition to the application, the 34<sup>th</sup> respondent, Mr. James Ndungo, filed a replying affidavit sworn on 3<sup>rd</sup> April 2024. He averred that the 80 suits involve 80 different respondents, each with unique transactions, facts, and circumstances, making consolidation inappropriate. He further averred that a mass hearing of 80 cases would be time-consuming and impractical. He opined that each case must be decided on its own merits. Mr. Ndungo contended that differing Court rulings reflect judicial discretion, not inconsistency. In addition, dissatisfied parties should pursue appeals rather than seek blanket orders for withdrawal or transfer of the cases. He asserted that the applicants can withdraw the 80 cases individually without any Court assistance, as demonstrated in SCCCOMM No. E1597 of 2024.
5. The 71<sup>st</sup> respondent, Ms Rosemary Njoki Mburu, in response to the application herein, filed a replying affidavit sworn on 2<sup>nd</sup> April 2024. She stated that the applicants have a constitutional right to withdraw their claim, subject to cost conditions imposed by the Court. She averred that the Nairobi Small Claims Court has jurisdiction over the suit filed against her, as she resides and works in Nairobi, and the claim falls within the Court's monetary limits. Ms Mburu stated that the suit against her is set for hearing on 17<sup>th</sup> April 2024, and justice would be best served by allowing it to proceed. She denied knowledge of the standard contract cited by the applicants and disputed the claim that she was a tenant or customer. She asserted that she was merely an employee of the Institute of Trade Development Limited, but not its owner or representative.
6. In opposition to the instant application, the 74<sup>th</sup> respondent, Ms Sheila Rita, filed a replying affidavit sworn on 4<sup>th</sup> April 2024, as a Director of the 74<sup>th</sup> respondent company. She averred that the High Court in HCCOMMA No. E036 of 2022 held that the Small Claims Court lacks jurisdiction over rental claims, yet the applicants still filed these cases there. She claimed that the 74<sup>th</sup> respondent is unrelated to the other cases and can only respond to its specific suit. She suggested that the correct approach is dismissal of the said cases so that they can be re-filed in the appropriate Court. Ms Rita contended that a blanket order affecting all the 80 cases violates the right to a fair hearing, as each respondent is only privy to his/her own case. She stated that the applicants have not shown how they would be prejudiced if the suits were to proceed as filed. She maintained that each case must be heard individually.
7. In opposition to the instant application, the 17<sup>th</sup> respondent filed Grounds of Opposition dated 28<sup>th</sup> March 2024, raising the following issues–
  - i. That the instant application is a classic abuse of the Court process, wanting in bona fides on all facets and a waste of the precious judicial time and efficient administration of justice;
  - ii. That there is currently pending a Preliminary Objection on jurisdiction filed by the 17<sup>th</sup> respondent as against the suit filed by the applicants in SCCOMM No. E9773 of 2023;
  - iii. That this Honourable Court is divested of jurisdiction to order transfer of the suit where jurisdiction is contested as the said suit is incompetent and void ab initio;
  - iv. That the instant application is premature and a non-starter as it seeks to divest the small claims Court of jurisdiction to determine matters before the said Courts including various Preliminary Objections;



- v. That this Honourable Court is divested of jurisdiction to determine the propriety of the various suits or reconcile the impugned judgments in any other forum other than on appellate jurisdiction; and
  - vi. That there is no substantive appeal hence this Honourable Court is divested of jurisdiction to dispose of the matters and or reconcile the varying judgments on this subject.
8. The 63<sup>rd</sup> respondent, Mr. Patrick Mwangi, filed a replying affidavit sworn on 15<sup>th</sup> April 2024. He averred that the applicants' suit filed against him being SCCCOMM No. E1717 of 2024 was struck out for lack of jurisdiction on 20<sup>th</sup> March 2024, following a Preliminary Objection he had filed, which was upheld. He asserted that the applicants should have appealed against individual decisions that they disagree with, instead of filing the instant application. Mr. Mwangi asserted that the instant application has been overtaken by events in respect to the suit filed against him.
  9. The application herein was canvassed by way of written submissions which were highlighted on 31<sup>st</sup> October 2024. The applicants' submissions were filed on 23<sup>rd</sup> April 2024 by the law firm of Harry Karanja & Company Advocates. The 71<sup>st</sup> respondent's submissions were filed by the law firm of Mbugua & Mbugua Advocates on 4<sup>th</sup> April 2024, the 17<sup>th</sup> respondent's submissions were filed by the law firm of Ayieko Kangethe & Company Advocates on 8<sup>th</sup> May 2024, the 74<sup>th</sup> respondent's submissions were filed on 31<sup>st</sup> May 2024 by the law firm of S. M. Righa & Company Advocates, the 34<sup>th</sup> respondent's submissions were filed on 12<sup>th</sup> June 2024 by the law firm of Ndungo James Gachiri Advocate, and the 63<sup>rd</sup> respondent's submissions were filed by the law firm of Tim Njenga & Company Advocates on 20<sup>th</sup> June 2024.
  10. Mr. Karanja, learned Counsel for the applicants submitted that the Agreements in question are licenses, not leases, as they do not confer exclusive possession or any real property interest, which distinction is crucial in determining the jurisdiction of the Small Claims Court. He stated that the Agreements explicitly state that they do not create tenancy or leasehold interests. Counsel cited Section 12(1)(a) of the *Small Claims Court Act* and submitted the said section grants the Small Claims Courts jurisdiction over claims related to the provision of services, which include licenses. He asserted that in filing the instant application the applicants seek to avoid inefficiencies and contradictory rulings, advocating for a clear, efficient, and fair resolution of the disputes.
  11. Mr. Mbugua, learned Counsel for the 71<sup>st</sup> respondent submitted that Order 25 Rule 1 of the Civil Procedure Rules, 2010 grants the power to withdraw suits exclusively to plaintiffs, not the Court. He contended that the applicants' request for the Court to withdraw multiple suits is misconceived. He argued that the suit filed against the 71<sup>st</sup> respondent was filed in the Nairobi Small Claims Court, which has the requisite geographical and monetary jurisdiction. Thus, there is no basis for transferring the said suit to a Magistrate's Court.
  12. Mr. Ayieko, learned Counsel for the 17<sup>th</sup> respondent submitted that the Small Claims Court is actively determining its jurisdiction over these matters. He cited Section 6 of the *Civil Procedure Act* which prohibits Courts from handling matters that are already pending before a competent Court and argued that jurisdiction disputes should be resolved first by the Small Claims Court, and if necessary, addressed by the High Court on appeal, not through the instant application. To buttress these submissions Counsel relied on the Supreme Court case of Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR.



13. Counsel also cited the case of Abraham Mwangi Wamigwi v Simon Mbiriri Wanjiku & Another [2012] eKLR, and submitted that the issue of transfer of the 80 suits should only arise after the question of jurisdiction is properly determined and if the Small Claims Court lacks jurisdiction, the said cases are null and void and cannot be transferred.
14. Mr. Kiwinda, learned Counsel for the 74<sup>th</sup> respondent relied on the case of Rebecca Chumo v Christina Cheptoo Chumo [2021] eKLR, and submitted that in view of the fact that the suit against the 74<sup>th</sup> respondent seeks recovery of rental arrears, which the Small Claims Court has no jurisdiction to determine, this Court has no authority to transfer the 80 suits as the same is a nullity ab initio. He argued that the applicants have an absolute right to withdraw the suits under Order 25 Rules 1 & 2 of the Civil Procedure Rules, 2010, subject to just terms set by the Court. He contended that the instant application is an afterthought and unjust, as it seeks a blanket order on 80 different suits, denying affected parties access to case details and the ability to respond properly.
15. Mr. Ndungo, learned Counsel for the 34<sup>th</sup> respondent relied on the decisions made in Executive Super Riders Limited v Albert Joacquinne Osumba [2022] eKLR and AKN v SLW [2021] eKLR, and submitted that the 34<sup>th</sup> respondent never disputed the jurisdiction of the Small Claims Court. Counsel stated that his client's Preliminary Objection in SCCCOMM No. E1597 of 2024 was based on Section 3(3) of the Law of Contract Act, which led to the 1<sup>st</sup> applicant withdrawing the said suit. He further submitted that each of the 80 cases involves different transactions, respondents, and facts, making them independent matters that cannot be consolidated.
16. He contended that while Section 18(1) of the Civil Procedure Act allows the High Court to transfer suits, doing so in this case would be unwarranted, as the proper recourse is through appeals. Mr. Ndungo argued that the applicants failed to justify why the High Court should intervene, as they have not exercised their right of appeal under Section 38(1) of the Small Claims Court Act.
17. Mr. Njenga, learned Counsel for the 63<sup>rd</sup> respondent submitted that the prayers sought herein in respect to the suit against the 63<sup>rd</sup> respondent are moot since the said suit was struck out on 20<sup>th</sup> March 2024 for lack of jurisdiction.

### **Analysis and Determination.**

18. I have considered the application filed herein, the grounds on the face of it, and the affidavit filed in support thereof. I have also considered the replying affidavits by the 34<sup>th</sup>, 71<sup>st</sup>, 74<sup>th</sup> & 63<sup>rd</sup> respondents, the Grounds of Opposition by the 17<sup>th</sup> respondent and the written submissions by Counsel for the parties. The issue that arises for determination is whether the instant application is merited.
19. The High Court has the power to withdraw and transfer cases instituted in Subordinate Courts as provided for under Section 18 of the Civil Procedure Act which states as hereunder –
  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.
  2. 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.
20. Factors to be considered by Courts when dealing with applications for transfer of suits under the provisions of Section 18 of the *Civil Procedure Act* were considered by the Court in the case of David Kabunga v Zikarega & 4 others (Kampala HCC No. 36 of 1995) cited by the Court in the case of GKK v ANK & another [2021] eKLR, as follows -

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. The burden lies on the applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another Court is not sufficient ground though it is a relevant consideration. As a general rule, the Court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice. What the Court has to consider is whether the applicant has made out a case to justify it in closing the doors of the Court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction... it is well established principle of law that the onus is upon the party applying for a case to be transferred from one Court to another for due trial to make out a strong case to the satisfaction of the Court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship, and if the Court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused...

21. The applicants' case is that it has 80 pending suits before the Milimani Small Claims Court. They stated that the jurisdiction of the Small Claims Court to hear these cases has been contested by some respondents herein, and in some instances, raised by the Court suo moto, on the ground that the claims involve recovery of rental arrears. The applicants argued that conflicting Court rulings have led to some cases being struck out, while others have proceeded to trial, thereby creating procedural and jurisdictional uncertainty, which has necessitated the present application.
22. On perusal of the responses and Grounds of Opposition filed by some of the respondents herein, it is evident that some of them do not dispute the jurisdiction of the Small Claims Court to determine the disputes between the parties. Some state that the suits against them have since been withdrawn, struck out and/or dismissed for want of jurisdiction, and in some suits, there are pending Notices of Preliminary Objection challenging jurisdiction of the Small Claims Courts to hear the said suits.
23. It is not in contest that the applicants only want the said 80 suits transferred on grounds that they may have been filed in Courts with no jurisdiction, and that conflicting Court rulings have led to some cases being struck out while others have proceeded to trial, which has created procedural and jurisdictional uncertainty.



24. The Court of Appeal in the case of Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel [2016] eKLR, in determining whether a suit filed in a Court with no jurisdiction is capable of being transferred held thus -

In numerous decided cases, Courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under S.18 of the *Civil Procedure Act* to transfer a suit filed in a Court lacking jurisdiction to a Court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow a Court to transfer an incompetent suit for want of jurisdiction to a competent Court would be to muddle up the waters and allow confusion to reign, it is settled that parties cannot, even by their consent confer jurisdiction on a Court where no such jurisdiction exists. It is so fundamental that where it lacks parties cannot even seek refuge under the O2 principle or the overriding objective under the *Civil Procedure Act*, the *Appellate Jurisdiction Act* or even Article 159 of *the Constitution* to remedy the same.

...In the same way, a Court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through transfer.” (Emphasis added).

25. In order for this Court to consider whether or not the 80 suits pending before the Small Claims Courts can be transferred, the said Courts first have to be given an opportunity to determine whether or not they have jurisdiction to determine them. I am not persuaded that conflicting Court rulings that have led to some cases being struck out, while others have proceeded to trial has created procedural and jurisdictional uncertainty, because in the event that the applicants are aggrieved and/or dissatisfied with any of those rulings, they can always pursue appeals against the decisions made thereon, pursuant to the provisions of Section 38 of the *Small Claims Court Act*.
26. The above notwithstanding, the applicants herein have not established and/or demonstrated any of the conditions precedent for being granted an order for transfer of the 80 suits, to warrant the same being withdrawn and transferred from the Small Claims Courts to be tried elsewhere.
27. In the premise and bound by the aforementioned Court of Appeal decision, it is my finding that the instant application is bereft of merits. It is hereby dismissed with costs to the respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 21<sup>ST</sup> DAY OF MARCH 2025.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Ms Kamwana h/b for Mr. Harry Karanja for the applicants

Mr. Njenga for the 63<sup>rd</sup> respondent

Ms Wacera h/b for Mr. Ayieko for the 17<sup>th</sup> respondent

Mr. Ndungo for the 34<sup>th</sup> respondent

Mr. Mbugua for the 71<sup>st</sup> respondent

Ms Wachira h/b for Mr. Kiringa for the 74<sup>th</sup> respondent



Ms. B. wokabi – Court Assistant.

