



**Malombo v Kibumba (Miscellaneous Civil Application
E002 of 2025) [2025] KEHC 4557 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4557 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CIVIL APPLICATION E002 OF 2025**

AN ONGERI, J

APRIL 8, 2025

BETWEEN

MWAHE MALOMBO APPLICANT

AND

ATANUS KILENGE KIBUMBA RESPONDENT

RULING

1. The application coming up for consideration in this Ruling is dated 28th January 2025 brought under Section 1A, 1B and 3A and 18(1)(b) of the [Civil Procedure Act](#) Cap 21 Laws of Kenya and Order 51 of the [Civil Procedure Rules](#), 2010 Articles 159 of [the Constitution](#) of Kenya and all enabling provisions of the Law seeking the following orders:-
 - i. That this application be certified urgent and service thereof be dispensed within the first instance.
 - ii. That this honourable court be pleased to stay the proceedings of Voi SCCC No. E009 of 2024 (Mwahe Malombo =versus= Atanus Kilenge) pending the hearing and determination of this application inter partes.
 - iii. That this Honourable Court be pleased to transfer Voi SCCC No. E009 of 2024 (Mwahe Malombo v Atanus Kilenge) from the Small Claims Court at Voi to Voi Magistrate's Court.
 - iv. That the Applicant be granted leave to restate the claim upon transfer of the suit before the Voi Magistrate's Court.
 - v. That the costs of this application be provided for.
2. The application is based on the following grounds:-



- i. That on 23rd January 2025 the Applicant was granted leave by the Small Claims Court to file a medical report.
 - ii. That the medical report provided that the Applicant will require treatment amounting to Kenya Shillings One Million (Kshs. 1,000,000/=)
 - iii. That the Applicant will be seeking special damages above Kenya Shillings One Million which is above the Small Claims Court pecuniary jurisdiction.
 - iv. That the matter is slated for hearing before Hon. Stephen Musili on 30th January 2025.
 - v. That this Honourable Court has powers to have the matter transferred to a court equipped with the proper jurisdiction to hear and determine the matter.
 - vi. That no prejudice will be occasioned to the Respondent by the said transfer.
 - vii. That it is in the interest of justice that this matter be transferred to Magistrates Court at Voi for it to be heard and determined.
3. The application is supported by the affidavit of Walegwa Mwasawain which he deponed as follows:-
- i. That I am an Advocate of the High Court of Kenya, practicing as such in the firm of Rajab & Mbogo Advocates and I have conducted this matter on behalf of the Applicant;
 - ii. That the Applicant herein has filed the suit SCCE E009 OF 2024 (Mware Malombo v. Atanus Kilenge) before the Voi Small Claims Court where she is seeking inter alia special damages of Kenya Shillings Two Hundred and Sixty Thousand Nine Hundred and Thirteen (Kshs. 260,913/-)
 - iii. That on 23rd January, 2025 the matter came up before the Small Claims Court and the Applicant herein was granted leave to file a medical report as the Honourable Court's records will show and support.
 - iv. That upon receipt and perusal of the medical report from Dr. HANIF the conclusion from the doctor was that the Applicant would require a medical procedure costing approximately Kshs. 1,000,000/-
 - v. That as a result, the Applicant's claim for special damages exceeds Kenya Shillings One Million, which exceeds the pecuniary jurisdiction of the small claims court.
 - vi. That the Applicant wishes to transfer her claim from the Small Claims Court to the Magistrates Court which has pecuniary jurisdiction to hear and determine it;
 - vii. That the matter is slated for hearing before Hon. Stephen Musili on 30th January, 2025 as the Honourable Court's records will show and support;
 - viii. That owing to the requirement that all matters before the Small Claims Court must be determined within 60 days of filing, the Applicant is apprehensive that the trial Court will not be in a position to grant further adjournment of the matter.
 - ix. That if the matter was to proceed for the scheduled hearing on 30th January, the Applicant's application will be rendered nugatory as any orders issued after the hearing of the Small Claims suit will be overtaken by event and unenforceable.
 - x. That this Honourable Court has powers to have the matter transferred to a court equipped with the proper jurisdiction to hear and determine the matter;



- xi. That once the matter is transferred there is a need for the Applicant to restate the claim as the pleadings in the Small Claims Court are different than those of the Magistrates Courts;
 - xii. That no prejudice will be occasioned to the Respondent by the said transfer.
 - xiii. That I pray that this Honourable Court do make an order to transfer the proceedings in Voi SCCC E009 OF 2024 (Mwahe Malombo v Atanus Kilenge) from the Small Claims Court at Voi to Voi Magistrates Law Courts.
 - xiv. That it is in the interest of justice that this matter be transferred to Voi Magistrates Law Courts, for it to be heard and determined.
 - xv. That the Applicant undertakes to expeditiously prosecute the claim in a timely manner, so as not to prejudice the Respondent;
 - xvi. That unless the orders sought are granted, the Applicant stands to suffer irreparable damage;
 - xvii. That there has been no delay in bringing this application;
 - xviii. That no prejudice will be suffered by the Respondent if this application is allowed;
4. The Respondent filed grounds of opposition as follows:-
- i. That the Applicant expressly admits that the suit was filed in a court without jurisdiction hence in law there exists no suit worthy transfer to another court with jurisdiction.
 - ii. That a null and void suit is dead and does not in law exist and as such it cannot be breathed life and/or cured by being taken from one court to another as this Honourable Court is being asked to do.
 - iii. That the only available option to the Applicant is to withdraw the suit altogether and file the suit afresh in the competent court of law.
 - iv. That the only other available option is for the court to have the suit dismissed for want of the jurisdiction.
 - v. That the application is bad in law and fatally defective and is a clear case of the abuse of the process of the court.
 - vi. That the application should be dismissed with costs.
5. The parties filed written submissions which I have duly considered.
6. The sole issue for determination is whether this suit should be transferred to Voi Magistrate's Courts for hearing.
7. I find that the application to transfer the case to the magistrate's court for reasons that it is beyond the pecuniary jurisdiction of the SCC is a procedural issue and no prejudice will be suffered by the respondent.
8. In the case of *John Mwangi Karanja v Alfred Ndiangui* [2011] eKLR, the Court held as follows;
- “With the enactment of sections 1A and 1B of the *Civil Procedure Act*, the time has perhaps now come for this matter of transfer of suits to be looked at afresh...It appears to me that transfer of suits from one court to another is essentially a procedural issue that has been elevated to the status of jurisdiction. If a suit finds itself in the wrong court, surely it is



in the interests of justice and in the interests of all concerned that the suit be forwarded to the appropriate court with jurisdiction so that the issues in dispute can be properly and finally adjudicated. What prejudice would an party suffer in that invent? After all, the overriding objective of the Civil Procedure Act and Rules is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act (section 1A(1)).The court itself is enjoined by subsection (2) of that section to seek to give effect to the said overriding objective in exercise of its powers under the Act or the interpretation of any of its provisions.”

9. The Application dated January 30, 2025 is accordingly allowed. Each party to bear its own costs of the application.

DATED, SIGNED AND DELIVERED THIS 8TH APRIL 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

Miss Mwasawa for the Applicant

Mr. Mwinzi for the Respondent – absent

