



REPUBLIC OF KENYA



KENYA LAW
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**Shwashwaa v Kibumba (Miscellaneous Civil Application
E003 of 2025) [2025] KEHC 4588 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4588 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CIVIL APPLICATION E003 OF 2025**

AN ONGERI, J

APRIL 8, 2025

BETWEEN

HILTON MWAKIO SHWASHWAA APPLICANT

AND

ATANUS KILENGE KIBUMBA RESPONDENT

RULING

1. The application coming up for consideration in this Ruling is dated 30th 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 transfer Voi SCCC No. E010 of 2024 (*Hilton Mwakio Shwashwaa v= Atanus Kilege*) from the Small Claims Court at Voi to Voi Magistrate's Court.
 - iii. That the Applicant be granted leave to restate the claim upon transfer of the suit before the Voi Magistrate's Court.
 - iv. 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 had incurred compound multiple fractures.
 - iii. That when the matter came up before Hon. Stephen Musili on 30th January 2025 the court noted that due to the injuries stated on the report it will be prudent for parties to apply in the High Court to have the matter transferred to a court equipped with the proper jurisdiction to hear the matter.
 - iv. 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.
 - v. That no prejudice will be occasioned to the Respondent by the said transfer.
 - vi. 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 Mwasawa in 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 conduct of this matter on behalf of the Applicant;
 - ii. That the Applicant herein has filed the suit SCCC E010 of 2024 (Hilton Mwakio Shwashwaa Vs Atanus Kilenge before the Voi Small Claims Court.
 - 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 report stated that the Applicant had incurred compound multiple fractures..
 - v. That consequently when the matter came up on 30th January 2025 before Hon. Stephen Musili, the court directed that noting the findings on the medical report, parties to apply in the High Court to have the matter transferred to a court equipped with the proper jurisdiction to hear the matter;
 - vi. 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;
 - vii. 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;
 - viii. That no prejudice will be occasioned to the Respondent by the said transfer.
 - ix. That I pray that this Honourable Court do make an order to transfer the proceedings in Voi SCCC E010 of 2024 (*Hilton Mwakio Shwashwaa v Atanus Kilenge*) from the Small Claims Court at Voi to Voi Magistrates Law Courts.
 - x. 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.
 - xi. That the Applicant undertakes to expeditiously prosecute the claim in a timely manner, so as not to prejudice the Respondent;
 - xii. That unless the orders sought are granted, the Applicant stands to suffer irreparable damage;



- xiii. That there has been no delay in bringing this application;
- xiv. 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 event? 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 30th January 2025 is accordingly allowed. Each party to bear its own costs of the application.

DATED, SIGNED AND DELIVERED THIS 8TH OF 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

