



REPUBLIC OF KENYA



KENYA LAW
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**Kemboi v Republic (Criminal Revision E304 of 2023)
[2025] KEHC 7255 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7255 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E304 OF 2023
RN NYAKUNDI, J
MAY 23, 2025**

BETWEEN

JOSEPH KEMBOI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 30th day of October 2023 seeking the following orders:
 - i. That, the application be certified as urgent
 - ii. That, in the interim there be stay of further proceedings and or stay of further case No. E100 of 2023 between *Republic v Joseph Kemboi*
 - iii. That, the court be pleased to call for file No. Iten criminal case No. with a view of revision of orders and or proceedings made on 23/10/2023 and in particular the orders denying the accused an adjournment
 - iv. That the court do review the orders made on 23/10/2023 by setting aside proceedings made on the said 23/10/2023 and all consequential orders and thereby order that the defence hearing of the matter be re-opened and be conducted before another magistrate other than Hon.C. Kutwa, Senior Principal Magistrate
 - v. That Iten Senior principal magistrate criminal case No. E100 of 2023 be transferred to Eldoret Chief Magistrate court for hearing and determination
2. The same is supported by an affidavit sworn by Joseph Kemboi which states as follows:
 - i. That, I am applicant herein hence competent to swear this affidavit



- ii. That I am accused person in Iten Criminal case No. E100 of 2022 Republic v Joseph Kemboi having been charged with two counts of cutting forest produce in a provisional forest and being possession of logging tools.
 - iii. That upon pleading not guilty the matter was set down for hearing and whether after I was placed on my defence where the same was scheduled for defence hearing on
 - iv. I material time I had been represented by an advocate one Kevin K. Lagat of D.K Korir advocate
 - v. That on the morning of 23/10/2023, I received a call from my advocate indicating that he wished to recuse himself from my matter citing personal reasons and conflict of interest which specific reason, the advocate did not disclose
 - vi. That on the said date, I proceeded to the court where upon being called out ,I informed the court about my predicament with my advocate whereof I applied for adjournment to enable me instruct another advocate represent me in the matter.
 - vii. That the learned magistrate dismissed my application for adjournment and thus proceeded and insisted that I proceeded with defence hearing as such I had no option but had to proceed without an advocate by giving explanation in a layman's language whereafter the matter was fixed for judgement on 22/11/2023
 - viii. That I am aggrieved by the decision of the learned magistrate as such I have instructed my advocate to approach this court for review
 - ix. That I am further aggrieved and apprehensive that I may not get a fair hearing if Hon. C. A Kutwa proceeds presiding over the matter as i felt while dismissing my application, the learned magistrate used a language that clearly exhibited biasness in the matter and some hostility towards me
 - x. That the matter on the said 23/10/2023 was coming for defence hearing for the first time as such the learned magistrate exercised his discretion injudiciously while dismissing the application despite the fact that the prosecution had not objected to the adjournment
 - xi. That by ordering that I proceed with defence hearing and failing to afford me an opportunity to seek for alternative legal representation, the learned magistrate right to legal representation of my choice
 - xii. That I am aware that there are other 2 magistrates in Iten being honourable Karanja and Hon. E Kigen
 - xiii. That the matter herein was earlier being handled by Hon. Karanja until on 14/6/2023 when she recused herself citing the fact that she was handling a civil matter relating to the subject of the criminal case
 - xiv. That Hon. E. Kigen has and is handling another assault criminal case involving arising from similar transaction
3. In considering this matter, I invoke the provisions of the *Civil Procedure Act* underpinning it within the doctrine of pari materia. That is in the case of *Mwangi Karanja v Alfred Ndiangui* (2011) eKLR where the court held that: 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. These sections provide as follows:-



1A

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the court.

1B.

- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the Court at a cost affordable by the respective parties; and
 - e) the use of suitable technology.”

4. 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 any 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.”

The Court has now carefully read and considered the Application the affidavits and the written submissions and the issue for determination is *whether the Applicant is entitled to the orders sought*.

Section 18 of the Civil procedure Act bestows upon the High Court the powers to transfer suits of a civil nature. It provides;

- “(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”.

It is therefore not in doubt that the party applying for a transfer has the burden of providing sufficient reasons as to why the transfer is merited. It is not in doubt that the matter which the Applicant is seeking to have transferred to this Court was transferred from this Court to the lower Court at Gatundu. It is the Applicant’s contention that he has since filed a Defence and a Counter claim which the Lower Court has no jurisdiction over. So that in essence, the Applicant is seeking for the transfer of the suit property based on the fact that the subordinate Court does not have the Jurisdiction to deal with the matter.

5. The legislative scheme entrenched the power of the High Court to change the venue of trial in terms of Section 81 of the CPC, Cap 75 of the Laws of Kenya and it expressly states as follows: “ Whenever it is made to appear to the High Court:-
 - a. That a fair and impassion trial cannot be heard in any criminal court subordinate thereto or
 - b. That some questions of law of unusual difficulty is likely to arise or
 - c. That a view of the place in or near which any offence has been committed may be required for the satisfactory trial of the offence or
 - d. That an order under this section will tend to the general convenience of the parties or witnesses.
 - e. That such an order is expedient for the ends of justice or is required by any provision of this code. It may order:
 - i. That an offence be tried by a court not empowered under the proceeding sections of this part but in other respects competent to try the offence.
 - ii. That a particular criminal case or class of cases be transferred from a criminal court, subordinate to its authority to any other criminal court of equal or superior jurisdiction.
 - iii. That an accused person be committed for trial to
6. Guided by the above principles this case docket be and is hereby transferred from Iten Law Courts to the Chief Magistrate’s Court at Eldoret for hearing and determination. Status Conference 6.6.2025.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 23RD DAY OF MAY 2025

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R. NYAKUNDI



JUDGE

