



REPUBLIC OF KENYA



**KENYA LAW**  
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**Balongo v Nyikuli (Miscellaneous Civil Application  
E018 of 2023) [2025] KEHC 8138 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8138 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
MISCELLANEOUS CIVIL APPLICATION E018 OF 2023**

**CW MEOLI, J**

**JUNE 12, 2025**

**BETWEEN**

**ANDREA BALONGO ..... APPLICANT**

**AND**

**PATRICE NYIKULI ..... RESPONDENT**

**RULING**

1. For determination is the motion dated 12.02.2023 by Andrea Balongo (hereafter the Applicant) seeking inter alia to stay proceedings in Kajiado CMCC No. E419 of 2021 (hereafter the subject suit) and that this court be pleased to withdraw the subject suit between the parties herein and transfer it to the Chief Magistrate's court at Busia for hearing and determination. The motion is expressed to be brought under Sections 1, 1A, 1B, 3A 15 and 18 of the *Civil Procedure Act* cap 21 (CPA), Order 51 Rule 1 of the Civil Procedure Rules (CPR) among others. On the grounds thereon, as amplified in the supporting affidavit sworn by Applicant.
2. His case is that the Respondent who is his cousin lodged the subject suit against him; that he filed a defence; and that there is yet another case filed against him by his own brother conspiring with the Respondent in the Chief Magistrate's Court at Milimani, namely, CMCC No. E1662 of 2022 (the Nairobi suit) arising from matters related to his family. Further asserting that the subject suit arose from references to the Respondent that he had made in an email that he allegedly sent to his said brother. Concerning events that took place in Busia and that one person mentioned in the email (their uncle) is based in Busia. Further that there are witness statements recorded by the police in Busia touching on the Respondent. Hence, it is only fair that the matter be transferred to Busia.
3. The Respondent opposed the motion through a replying affidavit dated 16.03.2023. He views the motion as an abuse of the Court process, mischievous and a delaying tactic meant to defeat justice. He deposed that the Applicant's reference to the Nairobi suit is intended to mislead the court; that allegation that he has colluded with another party to file cases against the applicant are untrue; that the



subject suit arose from defamatory statements by the Applicant that are separate, distinct and peculiar to him; and that the two causes are different. Besides, under the *Civil Procedure Act*, defamation suits can either be filed where the cause of action arose or where the Defendant resides, carries on business or works for gain.

4. He further swore that while the Applicant resides in Canada, and the defamatory words were published against him on account of his work with Camp Ohana, an organization based in Kitengela within Kajiado County, and due to the defamation, no longer operates in Busia. He added that no evidence has been adduced to demonstrate the existence of statements recorded by police in Busia, as alleged by the Applicant.
5. The motion was canvassed by way of written submissions. The Applicant after restating the contents of his affidavit material submitted that both the Kajiado and the Busia magistrate's courts have jurisdiction to hear and determine the respective defamation claims raised in the subject and Nairobi suits, reiterating that the relevant events occurred in Busia. Counsel here citing the court's duty to further the overriding objective in section 1A (2) of the CPA to facilitate just, expeditious, proportionate and affordable resolution of disputes. Further asserting that under section 15 of the CPA a suit ought to be filed where the cause of action arose, in this case, Ganjala, Busia.
6. The Applicant called to his aid the provisions of section 18 CPA that empowers the court to withdraw the subject suit and transfer it to Busia. He relied on the case of *Waweru vs Prime Auto Solutions Limited* (Miscellaneous Civil Application E053 of 2023[2024] KEHC 1971 where the court held that the power of transfer aligns with the court's duty under the overriding objective in section 1A and B of the CPA.
7. The Respondent by his submissions dated 16.10.2024, only submitted on the question whether the Applicant had justified his application for transfer of the subject suit. Citing the provisions of 15 of the CPA regarding the place of suing, he submitted that the authority of the High court to transfer suits from one subordinate court to another is set out in section 18 of the CPA. He relied on the case of *Sammy Kipserem Chepsiror –vs- John Macharia Okombo* [2022]eKLR where the court followed the Ugandan case of *David Kabungu -vs- Zikamunga & 4 others* HCCC NO. 36 of 1996 (in Kampala) and *Hangzhou Agrochemicals Industries Ltd -vs- Panda Flowers Ltd* [2012]eKLR for the proposition that as a general rule courts should allow suits filed in compliance with section 15 CPA to be heard where filed, unless the expense and difficulties of the trial would be so great as to lead to injustice.
8. Pointing out that the defamatory statements were published in a virtual space, and that he resides and works in Kajiado, he urged that the application be disallowed, once more citing *Sammy Kipserem Chepsiror* (supra) in resisting transfer on the basis of the witness costs and geographical location. It was his submission that any witnesses that the Applicant wished to call could testify virtually, and at a minimal cost.

### **Analysis and Determination**

9. The court has considered the parties' rival affidavit material and submissions. The only issue for determination is whether this court ought to transfer the subject suit from the Chief Magistrate's Court at Kajiado to the subordinate court at Busia as prayed.
10. In the court's considered view, the subject suit being one for defamation, the cause of action arose where the Applicant's admitted email in question was allegedly received and read, that is, published by Applicant to the recipient(s). This appears to have been Nairobi where a related cause has been filed against the Applicant, and Busia. Although the parties herein focused their submissions on section 15



of the CPA, the more pertinent provision for purposes of the matter before the court is section 14 of the CPA which provides that: -

“Suit for compensation for wrong to the person or movables where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of those courts. Illustration.—

- (a) A residing in Mombasa beats B in Nairobi. B may sue A either in Mombasa or Nairobi. Illustration. —
- (b) A residing in Mombasa publishes at Nairobi statements defamatory of B. B may sue A either in Mombasa or Nairobi. (Emphasis added)

11. From a reading of the copy of the plaint in the subject suit, which is attached to the Applicant’s affidavit, and paragraph 11 of the replying affidavit, the cause of action in the subject suit arose in Nairobi and/or Busia where the alleged defamatory publication(s) was made in the year 2021. During the material time, the Respondent was, according to the said plaint, residing in Kitengela, Kajiado while the Applicant resided in Nairobi. Pursuant to the provision above and based on his own pleadings and affidavit, the Respondent ought to have filed his suit at Nairobi or Busia. He elected to file the suit in Kajiado, his place of residence.
12. The place of suing for purposes of a defamation suit, is determined by the place where the cause of action arose or where the defendant resides, and not where a plaintiff resides or carries on business. Given the averments in his plaint, it is disingenuous for the Respondent in justifying the choice of court before which to lodge the subject suit, to assert that the cause of action arose in virtual space. Even though it is admitted that the Applicant currently resides in Canada, the emails leading to the subject suit were sent while the Applicant was living in Nairobi, per the plaint in the subject suit.
13. It is evident from the foregoing that the subject suit should not have been filed before the subordinate court at Kajiado, but rather, in the subordinate court at Nairobi or Busia. The subject suit is therefore liable for transfer to either of these courts under section 18(1) of the CPA. Thus, the key question here is not whether the subject suit should be transferred, but rather, the court to which it should be transferred; whether Nairobi or Busia. Despite his current residence, the Applicant desires the latter while the Respondent prefers the subordinate court at Kajiado.
14. Section 18 of the CPA provides as follows: -

“On the application of any of the parties and after notice to the parties and after hearing each 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; 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.”

Or

- iii. Retransfer the same for trial or disposal to the court from which it was withdrawn”.

15. In considering the most appropriate court to which the subject suit ought to be transferred, the court has looked at the affidavit material on both sides, and annexures thereto, and more particularly the copy of pleadings in respect of the subject suit and the Nairobi suit, emails marked as annexure AB1-3 and 5 attached to the Applicant’s affidavit. Undeniably, there is some nexus between the subject suit and alleged events in Busia where, according to the Respondent himself (see paragraph 11 of the replying affidavit) the reputation of his organization, then operating in the said county at the material time, was allegedly seriously damaged by the defamatory publications that he attributes to the Applicant. Which may support assertions by the Applicant that certain witnesses are based in Busia.
16. Additionally, both the Applicant and the Respondent hail from Busia and are relatives. While urban persons like the parties herein may have access to technology enabling virtual attendances for purposes of the trial, such amenities may not be readily available to possible witnesses based in a rural setting, such as Busia. A local court would be more accessible to them, facilitating the overriding objective in section 1A (1) of the CPA for the just, expeditious, proportionate and resolution of this dispute.
17. In light of the foregoing, the court is of the considered view that the subordinate court at Busia is the most appropriate court to try the subject suit. Consequently, the court hereby issues an order to transfer the subject suit to Chief Magistrate’s Court at Busia, as sought in the motion dated 12<sup>th</sup> February 2023. The costs of the motion are awarded to the Applicant in any event.

**DELIVERED AND SIGNED ELECTRONICALLY AT KAJIADO ON THIS 12<sup>TH</sup> DAY OF JUNE 2025.**

**C.MEOLI**

**JUDGE**

In the presence of:

For the Applicant: Mr. Kamau h/b for Mr. Thuku

For the Respondent: Ms. Wanyala

C/A: Lepatei

