



**LMW v JWW & another (Family Miscellaneous Civil Case E016 of 2024) [2025] KEHC 8962 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8962 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
FAMILY MISCELLANEOUS CIVIL CASE E016 OF 2024**

**MA ODERO, J  
JUNE 20, 2025**

**BETWEEN**

**LMW ..... APPLICANT**

**AND**

**JWW ..... 1<sup>ST</sup> RESPONDENT**

**MWW ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this court for determination is the Notice of Motion application dated 9<sup>th</sup> August 2024 by which the Applicant LMW seeks the following orders:-

“ 1. That the Honourable court be pleased to transfer Othaya Succession Cause No. E152 of 2022, In the matter of the Estate of DWK from the Resident Magistrates Court at Othaya to the High Court for hearing and final determination.

2. That costs of this Application be provided for”

2. The Application which was premised upon Section 3A and 18 (1) (b) of the *Civil Procedure Act*, Rule 49, 63(1) and 73 Probate and Administration Rules, Order 50 of the Civil Procedure Rules 2010 and all enabling provisions of the law was supported by the Affidavit of even date sworn by the Applicant.

3. The Respondents MWW and JWW both opposed the application through the Replying Affidavit dated 3<sup>rd</sup> October 2024.

4. The matter was canvassed by way of written submissions. The applicant filed the written submissions dated 17<sup>th</sup> January 2025 whilst the Respondents relied upon their written submissions dated 15<sup>th</sup> January 2025.



## **Background**

5. This matter relates to the estate of the late DWK (hereinafter ‘the Deceased’) who died intestate on the 26<sup>th</sup> February 2022. A copy of the Death Certificate Serial Number XXXXXX appears as Annexure ‘LMWM1’ to the supporting affidavit dated 9<sup>th</sup> August 2024.
6. The Deceased was survived by the following persons
  - (a) LMW - Daughter
  - (b) JKW - Son
  - (c) JWW - Daughter
  - (d) PWW - Daughter
7. The estate of the Deceased comprised several parcels of land and bank accounts and the value of the estate was indicated to be Kshs. 8,000,000.
8. Following the demise of the Deceased the Applicant and one John Wachira (being the daughter and son of the Deceased) petitioned for letters of administration over the estate. A grant was made to the two jointly on 27<sup>th</sup> February 2023.
9. The Petitioners then filed a chamber summons dated 18<sup>th</sup> October 2023 seeking to have the Grant confirmed. In the said Summons for confirmation of Grant the Petitioner also sought to rectify the Grant so as to include two additional properties registered in the name of the Deceased.
10. The Respondents submitted a valuation report prepared by Snowbell Realtors land ltd indicating that the value of the entire estate of the Deceased to be approximately Kshs. 51,000,000 (see Annexure ‘LMWM 5’).
11. The Applicant submits that the valuation report was accepted by the lower court and consequently the value of the estate exceeds the pecuniary jurisdiction of the Magistrates’ courts. She prays that this court direct that the matter be transferred to the High Court for hearing and determination.
12. The Respondents in their reply aver that the Deceased was at all material times resident in Nakuru County and that the majority of the assets comprising the estate of the Deceased are located within the County of Nakuru where there exists a court with jurisdiction to hear and determine the suit.
13. The Respondents further aver that neither the Applicants nor themselves reside or work in Nyeri County and it would be cause economic hardship on the parties to have this matter litigated in Nyeri.
14. That the Othaya Magistrates Court has already made a finding that the cause exceeded its pecuniary jurisdiction and had therefore downed its tools. That the High Court cannot purport to transfer an incompetent cause to itself for hearing. The Respondents urge this court to dismiss the application for transfer of the suit to the High Court in Nyeri.

## **Analysis And Determination**

15. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties. The only issue for determination is whether the succession cause No. E152 OF 2022 filed at the Othaya Law Courts ought to be transferred to the Nyeri High Court for determination.



16. The transfer of cases from one Court of the Magistracy to another is a supervisory function of the High Court as set out in Article 165(6) and (7) of the Constitution of Kenya 2010 in the following terms:

- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

17. Section 17 of the Civil Procedure Act Cap 21 Laws of Kenya (hereinafter ‘the CPA’) provides as follows:

17. Power to transfer suits which may be instituted in more than one court:

Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court; and the High Court after considering the objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed.

18. Therefore where a contest arises as to which Magistrates’ Court shall hear and determine such a dispute, Section 17 mandates the High Court to decide which court to take over the conduct of the matters. Thus Section 17 of the CPA is an acknowledgement by the law that there are instances where a dispute may properly be instituted in two or more different magistrates’ courts.

19. Section 18 of the CPA provides for transfer and withdrawal of cases before a Magistrates court as follows:-

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. [Own emphasis]

20. The Law of Succession Act at Section 48 provides for the Jurisdiction of Magistrates in the following terms:-

- (1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a magistrate shall have jurisdiction to entertain any application and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may



be expedient in respect of any estate the gross value of which does not exceed the pecuniary limit prescribed under section 7(1) of the Magistrates' Courts Act, Act (No. 26 of 2015).

(2) .....

21. The Law of Succession Act at Section 49 provides for the territorial Jurisdiction of a magistrate's court as follow:-

The Magistrate's Court within whose area a deceased person had his last know place of residence shall, if the gross value of the estate of the deceased does not exceed the pecuniary limits set out in section 7(1) of the Magistrates' Courts Act, 2015, have in respect of that estate the jurisdiction conferred by section 48.

Provided that –

- i. the magistrate may, with the consent or by the direction of the High Court, transfer the administration of an estate to any other Magistrate's court where it appears that the greater part of the estate is situated within the area of that other magistrate or that there is other good reason for the transfer;
- ii. if the deceased had his last known place of residence outside Kenya, the High Court shall determine which magistrate shall have jurisdiction under this section;
- iii. every Magistrate's Court shall have jurisdiction, in cases of apparent urgency, to make a temporary grant of representation limited to collection of assets situated within his area and payments of debts, regardless of the last known place of residence of the deceased.

[emphasis my own]

22. A holistic reading of Sections 48 and 49 of the Law of Succession Act lead to the inevitable conclusion that the place of instituting a succession matter is the Deceased's last known place residence. The exception to the foregoing general position is, where there is proof that the greater part of the deceased's estate is situated within a different area than that where the Deceased resided and/or worked.

23. Notwithstanding the above, the key question is whether this suit was instituted in the correct court, in the first place? By dint of Section 18(1) (a) the trial court must be competent to try the suit in question.

24. Section 7 of the Magistrate's Act sets out the pecuniary jurisdiction of the Magistrate Court as follows:-

“7.

- (1) A Magistrate's Court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed -
  - a. twenty million shillings, where the Court is presided over by a chief magistrate;
  - b. fifteen million shillings, where the Court is presided over by a senior principal magistrate;
  - c. ten million shillings, where the Court is presided over by a principal magistrate;



- d. seven million shillings, where the Court is presided over by a senior resident magistrate; or
  - e. five million shillings, where the Court is presided over by a Resident Magistrate.
25. The trial court in adopting the valuation of the estate of the deceased at KES. 51,000,000/- immediately ought to have downed its tools. The oft cited decision in Owners of the Motor Vessel “Lilian S” V Caltex Oil (Kenya) Ltd [1989 eKLR comes to mind. In that case it was stated that:-

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.” [Own emphasis]

26. The Court of Appeal in Equity bank Limited vs Bruce Mutie Mutuku T/A Diani Tour & Travel (2016) eKLR observed as follows:

“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 Section 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 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 situation. In the same way, a court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through a transfer. In Abraham Mwangi Wamigwi v Simon Mbiriri Wanjiku & Another [2012] eKLR, it was held as follows:-

“It is therefore trite that where a suit is instituted before a tribunal having no jurisdiction, such a suit cannot be transferred under Section 18 aforesaid to a tribunal where it ought to have been properly instituted. The reason for this is that a suit filed in a court without jurisdiction is a nullity in law and whatever is a nullity in law is in the eyes of the law nothing and therefore the court cannot purport to transfer nothing and mould it into something through a procedure known as “transfer”. In other words, courts can only transfer a cause whose existence is recognized by law.” [Own emphasis]

27. In Honey Creepers Investment Limited vs Cab Investments Company Ltd & 4 others [2020] eKLR, the Court of Appeal stated as follows: [own emphasis]

“42. At this juncture, I should, as I normally do direct that the matter be transferred to the E & LC for hearing and determination. I normally put reliance on Daniel N. Mugendi (supra). The 2<sup>nd</sup> Respondent has, however, submitted



that based on the decision of the Court of Appeal in Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tourt & Travel [2016] eKLR, a court without jurisdiction has no power to transfer a case to a court with jurisdiction. .....” [Own emphasis]

28. Similarly in Sam Kinyua vs Yusuf Mbuno & 4 others; Tolbert Manyage (Interested party) (2022) eKLR the court echoed this position as follows:

“.....On issue of the transfer the 3<sup>rd</sup> and 4<sup>th</sup> respondents places reliance in the case of Honey Creepers Investment Limited case, (supra) where the learned Judge also made a substantive finding that the Court, as a consequence, lacked the requisite jurisdiction to transfer the incompetent Petition to the Court with the requisite jurisdiction, .....Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a compliant one in the Court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied....[Own emphasis]

29. Therefore the only option available to the Applicant’s to withdraw the suit in the magistrates court and file a fresh compliant suit in the High Court at Nakuru.

30. From the foregoing, I find that the application dated 9<sup>th</sup> August 2024 lacks merit and the same is hereby dismissed in its entirety. This being a family matter each side will bear its own costs.

**DATED IN NYERI THIS 20<sup>TH</sup> DAY OF JUNE 2025.**

.....

**MAUREEN A. ODERO**

**JUDGE**

