



**EAO v DOA (Miscellaneous Civil Application E018 of 2025)  
[2025] KEHC 9578 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9578 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
MISCELLANEOUS CIVIL APPLICATION E018 OF 2025**

**DK KEMEL, J  
JULY 4, 2025**

**BETWEEN**

**EAO ..... APPLICANT**

**AND**

**DOA ..... RESPONDENT**

**RULING**

1. The Applicant herein has filed the present application dated 23/5/2025 seeking principally an order that Children’s case No. E010/2022 DOA (suing on behalf of Minor and next friend OEB) vs. EAO – presently pending before the Senior Principal Magistrate’s Court in Nyando be transferred to the Chief Magistrate’s Court Registry at Siaya for trial and disposal by the Children’s Court at Siaya.
2. The application is supported by the grounds set out thereunder and the affidavit of EAO wherein she averred inter alia; the Applicant and the subject minor in Nyando MCCHC No. E010 of 2022 reside in Siaya town Alego Sub-County, a fact which is well within the knowledge of the Respondent yet the Respondent opted to file the above case in Nyando Law Courts Kisumu County; that no genuine reason was given, and none exists, for the filing of the above suit in Nyando by the Respondent; that the Respondent herein instituted Children’s case No. E010/2022 – DOA (suing on behalf of Minor and next friend of OEB) vs. EAO – at Nyando Law Courts; that both the subject minor and the Applicant reside in Alego Sub County, Siaya County and this fact is well within the knowledge of the Respondent; that the said suit ought to have been instituted at Siaya Law Courts and not at Nyando Law Courts; that the Applicant finds it expensive to continue defending the suit in Nyando since she is required to be physically present in court during hearing being a children matter; that there is no reason whatsoever why the Respondent decided to institute this suit in Nyando and believes that the Respondent in opting to file the suit in Nyando wanted to make it difficult for her to defend the suit and she therefore believes that the Respondent is abusing the process of the court; that the subject suit has been fixed for hearing at Nyando Law Courts on 13/8/2025 and that she is required to be physically



present and hence the need to hear the present application on priority before the scheduled date; that it is in the best interest of the subject minor that the case at Nyando be transferred to Siaya.

3. The application was opposed by the Respondent who filed a replying affidavit dated 10/6/2025 wherein he averred inter alia; that the Applicant is his wife and that the minor named OEB is his child who all come from Nyando sub-county within Kisumu County and within the jurisdiction of Nyando Law Courts; that he filed suit Children Case No. E10/2022 wherein he has sued the Applicant for several reliefs; that the issue of jurisdiction did not arise during the pre-trial conference and hence the present application is one of the way of delaying the matter; that the present application is made in bad faith and an afterthought and should be dismissed with costs.
4. The application was canvassed by way of oral submissions.
5. Mr. Amuga, learned counsel for the Applicant submitted inter alia; that the reason for the transfer is that the Applicant resides in Siaya together with the minor who lives with the Applicant; that the issue of jurisdiction had been raised by the Applicant vide Paragraph 3 of her statement of defence; that it is in the best interest of the minor to have this case transferred from Nyando to Siaya; that there is no reason why the child should be harassed over the travel to Nyando; that the Respondent violated the provisions of Section 15 and 18 of the [Civil Procedure Act](#).
6. Mr. Anyul, learned counsel for the Respondent submitted inter alia; that the Applicant is the wife of the Respondent while the minor is their child; that the Applicant and the Respondent used to reside in Nyando Sub- County where the suit has been filed; that the matter was filed in 2022 and that pre-trial directions were taken wherein both parties certified the matter as ready for hearing in Nyando and is scheduled for hearing on 13/8/2025; that the issue of jurisdiction had been dispensed with during the pre-trial conference; that there is a counter claim lodged in the suit; that all parties have subjected themselves to the SPM's Court Nyando; that it is not in the best interest of the minor to transfer the matter and that the case should proceed as scheduled; that transferring the case will entail the parties undergoing fresh directions in another court; that it is only 30 days before the hearing date; that the application should be rejected since the suit is likely to be concluded on the 13/8/2025; that the Applicant is out to delay the matter.
7. I have considered the application, rival affidavits and the submissions herein. It is not in dispute that the parties herein had been married and been blessed with one child. It is also not in dispute that a suit had been filed before Nyando Law Courts by the Respondent herein seeking for legal custody of the subject minor. It is also not in dispute that currently the parties do not live together since the Applicant and the minor reside in Siaya while the Respondent resides in Nyando. It is also not in dispute that the Children's case No. E10/2022 pending at Nyando Law Courts is scheduled for hearing on 13/8/2025. The issue for determination is whether the application has merit.
8. The transfer of suits by the High Court is provided for under Section 18 (1) (b) of the [Civil Procedure Act](#) which gives the court the general power to transfer all suits and that this power may be exercised at any stage of the proceedings even suo moto by the court without an application by any party. The burden lies on the Applicant to make out a strong case for the transfer.
9. Section 18 of the [Civil Procedure Act](#) 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 any 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.
10. The *Civil Procedure Act* Section 15 provides as follows: -
- “subject to the limitation aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction –
- a. The Defendant or each of the Defendants at the time of the commencement of the suit actually and voluntarily resides or carries on business, or personally works for gain; or
  - b. Any of the Defendants at the time of the commencement of the suit actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the Defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesces in such institution; or
  - c. The cause of action, wholly or in part arises.
11. The Applicant herein has maintained that after separating with the Respondent, she moved to Siaya where she currently resides with the child of the marriage who is still a minor and that the Respondent ought to have filed the suit at Siaya Chief Magistrate’s court instead of Nyando law courts. The Applicant in her statement of defence dated 15/9/2022 confirmed that she had indeed cohabited with the Respondent for some time but did not formalize the marriage. She further confirmed that the minor was born during her cohabitation with the Respondent. According to the Applicant, the Respondent should have filed suit in Siaya where she resides with the minor and where she works for gain. Indeed, section 15 of the *Civil Procedure Act* as stated aforesaid provides that the suit ought to be lodged where the Defendant resides or works for gain or where the cause of action arises. The Respondent has averred vide his plaint dated 28/6/2022 that he and the Applicant herein got married in the year 2012 in accordance with Luo customary law where he paid dowry to the Applicant’s parents. The Respondent further averred that they swore an affidavit of marriage on 23/9/2020.
12. It is noted from the pleadings of both the Applicant and respondent that they have not indicated the date and year when the two parted ways leading to the filing of the suit. It is clear that the parties herein are yet to dissolve their union formally or traditionally even though they have separated and that the Applicant has since gotten married elsewhere in Siaya. However, the Applicant has not indicated when she remarried. The failure by the parties to disclose the time that they parted ways has created some doubt regarding the question on the place where the cause of action arose. It is also apparent that the parties herein are now shadow boxing each other following their failed marriage and that each is seeking



to agitate their grievances at the courts of their choice. They are also revolving around the issue that the interest of the minor must be taken into consideration. This state of affairs appear in my view to suggest that both the Nyando court as well as Siaya court have the requisite jurisdiction to entertain the suit involving the parties herein. As the suit has been lodged in Nyando, i find that the parties should concentrate their energies there and have the same concluded there.

13. It has transpired from the oral submissions of the learned counsels that the parties indeed appeared before Nyando law courts over the pending matter and participated in the pre-trial directions and fixed the matter for hearing on the 13/8/2025. Learned counsels have urged this court to consider the best interest of the subject minor.
14. As the parties' issues revolve around the subject minor, this court will be persuaded by those sentiments. Indeed, the Respondent's suit relates to the legal custody of the subject minor while the Applicant seeks to shield the minor and herself from the rigours of having to travel to Nyando and back to Siaya over the trial. Section 18 of the *Civil Procedure Act* empowers this court to transfer suits on its own motion or by application by any of the parties to another subordinate court. Under the provisions of sections 1A and 1B of the *Civil Procedure Act* provides for the overriding objective of the court to attain the expeditious disposal of cases, the just determination of case and timely disposal of proceedings at a cost affordable to the parties.
15. As the parties herein have failed to confirm beyond doubt the question as to when the Applicant left her matrimonial home so as to enable the court determine the proper place of suing, iam left to consider the matter under the provisions of sections 1A and 1B of the *Civil Procedure Act*. It is noted that the matter at Nyando law courts is scheduled for hearing in earnest on the 13/8/2025. From the nature of the claim, it is clear that the matter is likely to be concluded on that date. I find that a direction that the parties do proceed at Nyando law courts, will be beneficial to them as the matter is likely to be wrapped up and a decision thereon made as compared to having the suit transferred to Siaya to start all over again with the reality that there will be considerable delay. I find that it is in the interest of the parties herein and the minor that the case at Nyando law courts be allowed to proceed to conclusion.
16. In view of the foregoing observations, it is my finding that the Applicant's application dated 23/5/2025 lacks merit. The same is dismissed with no order as to costs.

**DATED AND DELIVERED AT SIAYA THIS 4<sup>TH</sup> DAY JULY 2025.**

**D.KEMEI**

**JUDGE**

In the presence of:

Amuga...for Applicant

Anyal .....for Respondent

Okumu.....Court Assistant

