



**Helasabili Mobile Capital Limited v Chameleon Solutions Limited (Miscellaneous Application E153 of 2023) [2025] KEHC 9465 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9465 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS APPLICATION E153 OF 2023**

**PN GICHOHI, J**

**JULY 2, 2025**

**BETWEEN**

**HELASABILI MOBILE CAPITAL LIMITED ..... APPLICANT**

**AND**

**CHAMELEON SOLUTIONS LIMITED ..... RESPONDENT**

**RULING**

1. The Applicant has moved this Court by way of a Notice of Motion dated 27<sup>th</sup> April, 2023, brought under Section 3A and 18 of the [Civil Procedure Act](#) and Article 159 of [the Constitution](#), seeking for Orders; -
  1. This Court be pleased to Order transfer of Nakuru SCCC No. E134 of 2023 Chameleon Solutions Ltd Vs Helasabil Mobile Capital Ltd from the small Claims Court to the Magistrates Court in Nakuru.
  2. The Costs of the Application be borne by the Respondent.
2. The application is based on the grounds on the face of the application and the Supporting Affidavit of Fridah Gitonga, sworn on 27<sup>th</sup> April, 2023.
3. She depones that the suit herein involves a contract for the supply and installation of solar panels and insulated tanks by the Respondent at the Applicant's hotel, Buraha Zenoni Hotel & Resort.
4. She contends that the supplied products were faulty and poorly installed, leading to a fire at the Applicant's hotel on 31<sup>st</sup> October, 2021, causing significant losses amounting to Kshs. 2,519,733, which incident was communicated to the Respondent.
5. She states that an investigation by Madison General Insurance, the applicant's insurer, concluded that the Respondent's negligence was the sole cause of the fire and extensive losses. She particularised these



- losses to include replacement of glass panes, wall paintworks, plumbing accessories, electrical repairs, solar heating system repair, refilling fire extinguishers, and loss of two water tanks.
6. She contends that despite bringing these losses to the attention of the Respondent, it has refused to pay them instead, the Respondent filed the Nakuru SCCC No. E134 of 2023 seeking payment for the faulty solar panels delivered.
  7. In Response, that the applicant filed a counterclaim for Kshs. 2,153,281, representing the balance of the loss incurred after compensation from Madison Insurance. Which amount exceeds the Small Claims Court's pecuniary jurisdiction of Kshs. 1,000,000.
  8. She reiterated that both respondent's claim and the applicant's counterclaim in Nakuru SCCC No. E134 of 2023 involve the same parties, contract, and cause of action, making transfer to the Magistrate's Court appropriate.
  9. Further that this Court has powers under section 18 of the *Civil Procedure Act* to transfer a suit to a competent court when a subordinate court lacks pecuniary jurisdiction, especially due to a counterclaim.
  10. She stated that if the matter proceeds in the Small Claims Court, parties will be disentitled to any sum exceeding Kshs. 1,000,000, which would be a travesty of justice for the applicant. Conversely, that the Respondent will not suffer prejudice from the transfer, as it will have the opportunity to fully present their case.
  11. The application is opposed by the Respondent who filed a Replying Affidavit sworn on 15<sup>th</sup> June, 2023 by Clement Maina, Financial Controller for the Respondent. On its part, the deponents stated that the Respondent filed Nakuru SCCC No. E134 of 2023 to recover an outstanding balance of Kshs. 350,000/- from the Applicant for the supply and installation of solar panels, which claim was properly filed within the Small Claims Court's pecuniary jurisdiction.
  12. While admitting that the Applicant's counterclaim exceeds the pecuniary jurisdiction of the Small Claims Court, he stated that the application for transfer is an afterthought and made in bad faith. This is because the alleged fire occurred on 31<sup>st</sup> October, 2021, while the counterclaim was filed on 14<sup>th</sup> April, 2023, after the Respondent had filed its claim on 4<sup>th</sup> April, 2023.
  13. He stated that as a result of the counterclaim, the Respondent filed a notice of Preliminary Objection on 27<sup>th</sup> April, 2023, arguing that the Small Claims Court lacked pecuniary jurisdiction to determine the counterclaim under Rule 14 of the Small Claims Rules 2019.
  14. In addition, the Applicant filed the current Miscellaneous Application seeking the transfer of the case. Simultaneously, the Applicant also filed an application in the Small Claims Court seeking a stay of proceedings in Nakuru SCCC No. E134 of 2023.
  15. Based on these Applications, the Respondent contends that the Applicant's conduct indicates a motive to delay the hearing of the Respondent's suit in the Small Claims Court, and therefore, the application should be dismissed.
  16. Further that the Application contravenes Section 14(1)(c) of the Small Claim Rules. Moreover, the discretion to transfer a suit should be used sparingly, only when the Applicant has acted in utmost good faith and had a valid reason for choosing the wrong court, which the Applicant has not demonstrated. Therefore, the counterclaim filed without jurisdiction should be struck out.
  17. He concluded that the application is frivolous, in bad faith and is an abuse of the court process and should be dismissed with costs.



18. In a rejoinder by the Supplementary Affidavit sworn on 10<sup>th</sup> July, 2023, the Applicant reiterated his application and added that they do not have intention of delaying this matter rather that it's their counterclaim that has necessitated the transfer to the Magistrates Courts for justice to be done to both parties.
19. She maintained that this Court is empowered under section 18 of the [Civil Procedure Act](#) transfer this suit to the Court with jurisdiction.

### **Applicants Submissions**

20. The Applicant's submissions focused on whether sufficient cause has been demonstrated for the High Court to exercise its discretion and order the transfer of Nakuru SCCC No. E134 of 2023 from the Small Claims Court to the Magistrate's Court.
21. It was argued that the Small Claims Court initially had the requisite jurisdiction for the Respondent's claim of Kshs. 350,000. However, in responding to the claim by their counterclaim, the figures raised therein went beyond the Small Claims Court's pecuniary jurisdiction of Kshs. 1 million, necessitating this application for transfer to a competent Court that will be able to hear and determine the suit, thus preventing multiplicity of suits, saving judicial time and resources, and facilitating a just, expeditious, and proportionate determination.
22. The Applicant asserted that the Respondent's action of filing the suit in the Small Claims Court was ill-motivated and designed to work injustice against the Applicant, effectively closing the doors of justice. He maintained that the Respondent caused the Applicant to incur losses of Kshs. 2,153,281 and its move to claim pay of the faulty solar panels is ludicrous show of bad faith.
23. Therefore, that if this Court does not transfer the suit and the same continues in the Small Claims Court, the Applicant will be exposed to further losses as they will be compelled to pay the party responsible for the fire, thus prejudicing the Applicant and shutting the doors of justice. In contrast, the Respondent would not be prejudiced, and all parties would have a fair and neutral platform for their claims to be heard on merit.
24. Regarding the power of transfer, the Applicant cited *John Mwangi Karanja v Alfred Ndiangui* [2011] eKLR:- where H.P.G. Waweru , J held:-

“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 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.”



25. The Applicant also referred to the Ugandan case of David Kabungu v Zikarenga & 4 others, Kampala HCCS NO. 36 of 1995, where Okello, J stated:-

“Section 18 (1) (b) of the *Civil Procedure Act* gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. The burden lies on the applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is a relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction... it is well established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship.”

26. The Applicant argued that proceeding in the Small Claims Court would compel it to abandon its losses, thus favouring the Respondent. On the other hand, transferring the matter to the Magistrate's Court would ensure equal footing, with both the claim and counterclaim heard on their merits without prejudice to either party. Therefore, intervention by this Court is necessary to prevent injustice and unjust enrichment.

27. The Applicant further cited the case of Hangzhou Agrochemicals Industries Ltd v Panda Flowers Ltd [2012] eKLR where G.V. Odunga, J (As he then was) stated with regard to conditions for granting a transfer order: -

“...In my view, which view I gather from authorities and from the law, the court should consider such factors as the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship.”

28. The Applicant refuted the Respondent's suggestion to file a fresh suit at the Magistrate's Court while the Small Claims matter proceeds, arguing that this would lead to two suits involving the same parties and the same cause of action, which would result in the Respondent executing judgment against the Applicant before the Applicant's claim is concluded, despite the Respondent being responsible for the losses. The Applicant emphasised that justice dictates avoiding prejudice and multiplicity of suits, citing the case of Nyanza Garage v Attorney General (HCCS No. 450 of 1993) as quoted by John. M. Mativo, J (as he then was) in Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR, that:-

“In the interest of parties and the system of administration of justice, multiplicity of suits between the same parties and over the same subject matter is to be avoided. It is in the interest of the parties because the parties are kept at a minimum both in terms of time and money spent on a matter that could be resolved in one suit. Secondly, a multiplicity of suits clogs the wheels of justice, holding up resources that would be available to fresh matters, and creating



and or adding to the backlog of cases courts have to deal with. Parties would be well advised to avoid a multiplicity of suits."

29. The Applicant reiterated that forcing him to file another suit in the magistrate's court would cause multiplicity of suits which is unnecessary, impermissible, burdensome, an affront to the doctrine of sub judice, and an imprudent use of Court's time and resources. On the contrary, transferring the suit would save judicial resources and ensure expeditious justice without prejudice. In any event if both claims are merited at the Magistrate's Court, a set-off would be possible.
30. Finally, the Applicant cited the case of *Daikyo Japan Motors Ltd & 2 others v Fairuz Feisal Yasin* [2020] eKLR where D. O. Chepkwony, J held in regard to the essence of a counterclaim:-

"27. In my considered view, the rationale of Order 7 rule 8 is to avoid multiplicity of proceedings and claims based on the same or different causes of action as between the parties to the suit. The section did not contemplate a defendant filing an independent suit to a claim based on the same cause of action but rather envisaged the Defendant to proceed by way of counter-claim. I am also of the considered view that, the circumstances leading to the cross-action by way of Counter-claim and set off are so closely intertwined that the only thing which any reasonable Court would do is to rule that the original suit and the counterclaim should be heard as one suit. Separating the Counter-claim from the main suit will lead to a multiplicity of suits and extra costs hence defeat the objective of Section 1A (1) of the *Civil Procedure Act*...the correct procedure to cure the pecuniary dispute is for the Applicants to file a Counter-claim then seek to have the suit transferred to the High Court if the Counter-claim exceeds the pecuniary jurisdiction of the Magistrates Court."

31. In conclusion, the Applicant urged this Court to allow the application as prayed.

### **Respondent's Submissions**

32. The Respondent opposed the Applicant's request to transfer the case from the Small Claims Court to the Chief Magistrate's Court, arguing that the Applicant has not established a basis for the transfer and that the application constitutes an abuse of court process aimed at delaying the expeditious determination of SCCC No. E134 of 2023.
33. The Respondent submitted that when the Applicant filed the counterclaim it expressly waived the recovery of all sums of above Kshs. 1,000,000/- excluding costs and interests. Therefore, due to this waiver, there is no basis for transferring the case, as the Small Claims Court now has the requisite pecuniary jurisdiction of up to Kshs. 1,000,000/- to hear and determine the suit in accordance with Section 12 of the *Small Claims Court Act* and Rule 14(3) of the Small Claims Rules. Hence, the Applicant cannot recover the waived amount in any other court.
34. While acknowledging the court's wide discretion to transfer a suit, the Respondent asserts that such discretion is not a matter of right and requires a very good explanation for the initial filing in the wrong court. In support of this, reliance is placed in the case of *Jabali Chondo Kavu v Suleiman Omar Mwarogo* [2021] KEELC 1005 (KLR), where Munyao Sila, J stated: -

"Although the court has wide discretion to transfer a suit filed in the wrong court, I think this can only be done upon very good explanation being provided as to why the matter was filed in the wrong court in the first place. The applicant must demonstrate that he filed suit in the wrong court in good faith, through inadvertence and/or excusable mistake, and therefore deserves to be pardoned and the discretion of the court extended in his favour. I



do not think that the court ought to provide grace to a litigant who has deliberately, and for purposes only known to him, proceeded to file suit in a court without jurisdiction. The discretion to transfer in my view must be used sparingly and only in cases where it is clear that the applicant acted in utmost good faith and had reason to be mistaken on the choice of court. Bar this, the matter filed in the court without jurisdiction ought to be struck out. I have already mentioned that no explanation whatsoever has been given by the applicant as to why he filed suit in a court without jurisdiction. I am thus not persuaded to exercise my discretion to allow this application. This application is hereby dismissed, but since it was not opposed, I make no orders as to costs."

35. The Respondent argues that the Applicant has failed to offer any justifiable explanation for the transfer, making the application lacking in merit and warranting striking out, especially since the Applicant waived the right to recover sums above Kshs. 1,000,000/-.

36. While urging the Court to award him Costs of this application, the Respondent cited the case DGM v EWG [2021] eKLR, where Charles Kariuki, J opined: -

"This court agrees with the defendant that it has no fault at all in the plaintiff's misadventure in filing premature suit in terms of the indicators set above. The blame lies square on here shoulder who like a doctor ought to have known whether she was administering the right dose in her client's situation and circumstances. The misadventure occasioned defendant some expenses and legal fees."

37. He argued that the application is an abuse of court process due to the Applicant's waiver of sums exceeding Kshs. 1,000,000/-, which bars recovery of such amounts under Rule 14 (3) of the Small Claims Rules.

### **Analysis and determination**

38. The only issue for determination in this case is whether suit filed in the Small Claims Court can be transferred to the Chief Magistrate's Court.

39. Under section 12 (3) of the *Small Claims Court Act*, the pecuniary jurisdiction of the Small Claims Court is limited to a sum of Kshs. 1,000,000.00.

40. In the initial Claim filed by the Respondent on 4<sup>th</sup> April, 2023 in Nakuru SCCC Case No. E134 of 2023, he prayed for an award of Kshs 350,000 for goods allegedly supplied and not paid for by the Applicant herein. That claim is obviously within the Small Claims Court pecuniary jurisdiction.

41. The prayer for transfer of that claim was occasioned by the Applicant herein filling its Counterclaim on 14<sup>th</sup> April, 2023 where he counterclaimed for payment of Kshs 2,153,281, which amount exceeds the pecuniary jurisdiction of the Small Claims Court.

42. The law is clear that a Counterclaim is, for all intent and purposes, a separate suit and by filing a counterclaim that is clearly outside the Small Claims Court's pecuniary jurisdiction, the Applicants invites the court to exercise its powers of striking out that Counterclaim.

43. The Respondent rightly quoted Rule 14 of the Small Claims Court Rules, which gives a Respondent who wishes to file a counterclaim whose value exceeds the pecuniary jurisdiction of the court various options. Rule 14(1) provides that:-

1. A respondent who has a counterclaim exceeding two hundred thousand shillings may—



- a. abandon that part of the counterclaim exceeding two hundred thousand shillings;
  - b. pursue his or her counterclaim in the proceedings and recover an amount not exceeding two hundred thousand shillings; or
  - c. file a separate claim in the Magistrates' Court to recover the whole of the amount counterclaimed.
2. A respondent who abandons that part of the counterclaim exceeding two hundred thousand shilling shall state in his or her response that the amount in question is abandoned.
  3. A respondent who abandons any part of a counterclaim or set-off in accordance with this rule shall not be entitled to file a subsequent claim in any court to recover the amount stated as abandoned.”

44. Similarly, in this case, a perusal of the trial court file reveals that in paragraph K of the Counterclaim dated 14<sup>th</sup> April, 2023, the Applicant, herein pleads as follows:-

“By filling this claim, I, Helasabil Mobile Capital Limited, being the Counter-claimant herein, I hereby waive and forfeit the recovery of all sums in excess of Kshs 1,000,000.00 excluding costs and interests.”

45. Despite relinquishing its rights, the Applicant is now asking this Court to transfer the suit from the Small Claims Court to the Magistrate’s Court. The transfer being sought herein is from a court which lacks jurisdiction.

46. The law is now settled that a Court will not transfer a suit filed in a Court without jurisdiction to another Court of competent jurisdiction as was held in *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel* [2016] eKLR by Asike-Makhandia, W. Ouko & K. M’Inoti, JJA, that :-

“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.”

47. Further, in *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] KECA 767 (KLR) , the Court of Appeal reiterated that:-

“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. Without jurisdiction, the Court cannot confer jurisdiction



to itself. The subordinate court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction.”

48. In the circumstances, and since the Small Claims Court lacks jurisdiction to hear and determine the Counterclaim which the Applicant seeks to transfer, this Court cannot transfer a suit from a court without jurisdiction.

49. Accordingly, the application dated 27<sup>th</sup> April, 2023 is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 2<sup>ND</sup> DAY OF JULY, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Mr. Mwenda for the Applicant

Ms. Kimani for Vincent Tama for the Respondent

Ruto, Court Assistant

