



**JJW v GNW (Family Miscellaneous Application E007 of 2025)
[2025] KEHC 9777 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9777 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
FAMILY MISCELLANEOUS APPLICATION E007 OF 2025**

MS SHARIFF, J

JULY 3, 2025

BETWEEN

JJW APPLICANT

AND

GNW RESPONDENT

RULING

A. Background

1. The applicant and the respondent herein are a couple with a pending Divorce Cause No E 318 of 2025 filed in Chief Magistrate’s Court Milimani; GNW v JJM.

B. Application

2. Vide a notice of motion dated 20th May 2025 the applicant herein, JJW has moved this court for grant of the following prayers:-
 - i. Spent
 - ii. Divorce Cause No. EXXX of 2025 instituted at Milimani Commercial Magistrate’s court Nairobi be transferred to Bungoma Chief Magistrate’s Court.
 - iii. Spent
 - iv. No order is sought on costs
3. This application is premised on the grounds disclosed on the face of the application. Basically, that the parties are from the Bukusu Community with their rural home situated at Kimalewa in Bungoma County. It is stated that the applicant is 87 years old while the respondent is 78 years old and that they have 5 issues with the last born being over 30 years old. It is further said that the applicant’s advanced age militates against long distance travelling. Moreover, that other interventions to salvage the marriage



are available in Bungoma. Further, that the law on territorial jurisdiction favors a transfer of the Divorce Cause from Nairobi Milimani Court to Bungoma Chief Magistrates court.

4. The affidavit in support of this application sworn on 20.5.2025 by JJW reiterates the above reasons and he deposes that he suffers from physical incapacity due to partial paralysis of his left side resultant from a fall, hence the need for a locally domiciled Court to hear the Divorce Cause.
5. It is deposed by the applicant that the respondent has been instituting numerous cases against him in Bungoma and given that he is domiciled in Bungoma, the Divorce cause ought to have been filed in Bungoma.
6. The applicant further states that the respondent being the aggressor and of a younger age should be comfortable travelling from Nairobi to Bungoma to attend court and not vice versa.
7. It is the applicant's position that he is willing to salvage his marriage and that the parties' respective family members who could intervene are all domiciled in Bungoma.
8. This application has faced resistance from the respondent by way of an affidavit in reply sworn by GNW on 5th Jun 2025. The respondent has deposed that parties herein got married in Nairobi and she has annexed a copy of the marriage certificate as annexure GNW-1 to demonstrate that fact.
9. The respondent posits that the applicant has been attending court virtually since 2020 in Milimani High Court HCF OS E014 of 2020 and she has now wonders why the applicant wants to start attending court physically in Bungoma yet he says that he is incapacitated.
10. It is the respondent's stand that the filing of this application on the Eve of the hearing of the Divorce Cause, was calculated to derail the said Cause. Further that the applicant's preliminary objection to the jurisdiction of the Family Court in Milimani Subordinate Court was heard orally and disallowed.
11. The respondent further deposes that there are no chances of reconciliation of the parties given that the applicant had categorically stated in his Reply to the Divorce Petition that their marriage had irretrievably broken down.

C. Submissions

12. This application was canvassed by way of oral submissions with each party's advocate submitting in line with their respective client's position as elucidated in their respective affidavits in support of the application and in opposition thereto.

D. Analysis And Determination

13. The applicant has brought this application under the provision of section 47 of the [Law of Succession Act](#) yet the power of this court to transfer a case is donated to it under sections 17 and 18 of the [Civil Procedure Act](#) chapter 21 Laws of Kenya which provide as follows:-
 17. 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. (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— 16 CAP. 21 Civil Procedure [Rev. 2010 subordinate court. Institution of



suits. Service on defendant. Service where defendant resides in another district. Power to order discovery and the like.

- (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.

14. While considering an application for transfer of a suit from one court to another, this court must find guidance in the provisions of sections 1A, 1 B, 3 a and 15 of the [Civil Procedure Act](#).

15. Section 1 A enjoins this court to give effect to the overriding objective of the CPA which is to facilitate the just, expeditious, proportionate and affordable resolution of Civil disputes.

16. The duty of this court is prescribed under Section 1 B of the CPA as hereunder :-

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
- (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.

17. The inherent power of this court to make such orders as may be necessary for ends of Justice or to prevent abuse of the process of the court is encapsulated under section 3A of the CPA.

18. It is instructive to note that the place of filing a cause of action of the nature under reference is provided for under Section 15 of the CPA, which provides as follows:-

15. Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

- (a) the defendant or each of the defendants (where there are more than one) 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 (where there are more than one) 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 acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

19. It is not disputed that the marriage of the parties was conducted in Nairobi and the parties cohabited in Nairobi until, as the applicant states, he relocated to Bungoma upon falling sick in the year 2020.
20. The applicant has maintained that the Divorce Cause should have been filed in Bungoma in the first instance, while the respondent's position is that there are ongoing proceedings in Milimani Court HCF OS EXXX of 2020 which Cause the applicant herein has been attending virtually.
21. Section 1 B (e) of the *Civil Procedure Act* prescribes the use of technology in court proceedings. In deed almost all courts in Kenya currently hold virtual proceedings. This has allowed parties to attend court virtually and has cut down on travelling expenses and eliminated the need for physical attendance.
22. The factors that a court should consider when faced with an application for transfer of suit while enunciated by Justice Odunga (as he then was) in the case of *Hangzhou Agrochemical Industries Ltd v Panda Flowers Limited* (Civil suit No. 97 of 2009) (2012) KEHC 1937 (KLR) (CIV) (8 October 2012) Ruling thus:
 - a) Motive of the application
 - b) Character of the proceedings
 - c) Nature of the relief or remedy sought
 - d) Interests of the litigants
 - e) Balance of convenience and possibilities of undue hardship
 - f) The expenses to be incurred by parties and their witnesses
 - g) Interest of justice.
23. The issue of the applicant's inconvenience in travelling to attend Court physically in Milimani Nairobi has already been resolved by the use of technology which, as already stated hereinabove, led to the conduct of virtual court proceedings. The applicant has the option of attending court virtually.
24. Given that the Divorce Cause is already part heard, the balance of convenience tilts towards having it heard and determined by the Judicial officer who is already seized of it. This will save on vital Judicial time and ensure efficient, affordable and timely disposal of the Divorce Cause in line with the provisions of Section 1 B of the CPA and the tenets of STAAJ.
25. As regards the subject matter, I do find that no incremental value will be achieved by a transfer, given that, unlike succession or Land matters, the Court Seized of the Cause need not do a site visit nor insist on physical attendance of parties whose affection for each other has since dissipated.
26. I have considered the application and the supporting affidavit and I have not encountered any iota of evidence to demonstrate that the applicant has put into motion any efforts geared towards reconciliation. On the other hand, he has in his answer to the Divorce petition, specifically pleaded that his marriage to the respondent has irretrievably broken down. This state of affairs is further exemplified by the tone of this application and the passive aggressive use of words such as quote " the Respondent being the aggressor". A party who is desirous of reconciling would not use such unpalatable words to describe his spouse. The applicant's motive in craving for a transfer of the Divorce Cause from Nairobi



to Bungoma is thus suspect and is definitely not geared towards promoting the ends of justice. I do find that the applicant intends to abuse the court process.

27. As regards the need to consider territorial Jurisdiction in filing a case, this court takes cognizance of this necessity and wonders why the applicant made this application before this court yet there is a High Court Family Division in Milimani Law Courts. In line with conforming to territorial jurisdiction, this court does not have supervisory Jurisdiction over Milimani Magistrate Courts where the Divorce Cause No. EXXX of 2025 is pending.

E. Conclusion

28. On the balance I do find and hold that this Application is devoid of merit and it exemplifies conduct that amounts to abuse of court process. It is in the interest of Justice that I disallow it and I thus dismiss it accordingly.
29. Given that this is a family matter I will order that each party shall bear its own costs.
30. This file is marked as closed.

DELIVERED, SIGNED AND DATED AT BUNGOMA THIS 3RD DAY OF JULY 2025.

MWANAISHA S SHARIFF.

JUDGE

