



**Terracraft (K) Ltd v County Government of Tharaka Nithi (Civil Suit E216 of 2025)
[2025] KEHC 10664 (KLR) (Commercial and Tax) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10664 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E216 OF 2025**

F GIKONYO, J

JULY 3, 2025

**IN THE MATTER OF THE PROPOSED CONSTRUCTION OF
THARAKA NITHI COUNTY HEADQUARTERS AT
KATHWANA**

BETWEEN

TERRACRAFT (K) LTD APPLICANT

AND

COUNTY GOVERNMENT OF THARAKA NITHI RESPONDENT

RULING

1. Before me is the notice of motion dated 15th May 2025, by the respondent, County Government of Tharaka Nithi, seeking the transfer of this matter to the High Court of Kenya at Chuka for determination.
2. The gravamen is that this court lacks the territorial jurisdiction over the matter because the cause of action, including the project site, contract execution, and alleged breaches, arose within Tharaka Nithi County. Thus, the respondent argues that the High Court at Chuka is vested with jurisdiction over the matter under Section 12 of the *Civil Procedure Act*.
3. The application is supported by the affidavit sworn by the respondent's county attorney, Mwendani Franklin, Advocate on 15th May 2025 and written submissions dated 30th May 2025.
4. The grounds are:-



1. The continued hearing in Nairobi amounts to forum shopping and violates the doctrine of forum conveniens, as the current forum lacks any real connection to the dispute and causes unwarranted disadvantage to the respondent and the public.
 2. Since the suit concerns a delayed public infrastructure project funded by public funds, its resolution outside Tharaka Nithi County frustrates the objectives of devolved governance and service delivery under Article 174 of the Constitution, undermining efficient local dispute resolution.
 3. Most key witnesses, including county officials, technical staff, and consultants, and relevant records are based in Tharaka Nithi County. Requiring them to travel to Nairobi would incur substantial public expense and lead to administrative inefficiencies.
 4. The High Court, Commercial & Tax Division at Milimani is currently overwhelmed and unable to accommodate the matter with the urgency it demands. In contrast, the High Court at Chuka has a flexible diary that can offer the necessary judicial time and resources. This flexibility is critical to prevent further loss of public funds and ensure a timely, public-interest-oriented resolution.
 5. The applicant will not suffer any prejudice if the suit is transferred. However, retaining the matter in Nairobi would impose logistical, procedural, and constitutional burdens on the respondent and the public.
 6. Transfer is essential to achieve the just, expeditious, and efficient disposal of the suit in line with Sections 1A, 1B, and 3A of the Civil Procedure Act.
5. The respondent highlighted that the jurisdictional issue was raised at the earliest opportunity following the Court's ruling of 9th May 2025.
 6. The respondent relied on Section 18 of the Civil Procedure Act on the discretionary power of this court to transfer a suit filed in the wrong forum. It disputed the applicant's claim that Section 18 applies only to transfers to subordinate courts, arguing that it is a misinterpretation.
 7. The respondent argued that the applicant has not shown why Nairobi is the appropriate forum, given the lack of any factual connection. It relied on Article 174 of the Constitution, which supports the principle that public services should be accessed locally. It conceded that virtual proceedings have improved access to justice. However, it maintained that the nature of the suit, requiring physical evidence, local inspections, and effective coordination, still necessitates local interaction.
 8. The respondent relied on:-
 1. Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1
 2. Power Parts (Kenya) Limited v Kenya Ports Authority [2025] KEHC 4006
 3. David Kabungu v Zikarenga & 4 Others [1986] KLR 216

Response

9. The applicant opposed the application through a replying affidavit sworn by its managing director, Henry Kinuthia on 27th May 2025. It also filed skeletal and supplementary written submissions dated 28th May 2025 and 19th June 2025.



10. The applicant contended that the respondent's application is misconceived, premature, incompetent, and an abuse of the court process. It pointed out that states that the suit is based on its application dated 20th March 2025, for interim injunctive relief restraining the respondent from awarding or executing a contract for the completion of the Tharaka Nithi County Headquarters project and from ejecting it from the site.
11. The applicant highlighted that on 9th May 2025, the court issued interim orders permitting the applicant to conduct a valuation of its works on site, with cooperation from the respondent, and stayed the commencement of any works until that valuation was completed. It was only after this ruling that the respondent sought to transfer the matter to Chuka, which is an afterthought.
12. The applicant faulted the respondent for not raising the issue of jurisdiction before the delivery of the ruling. It argued that the issue ought to have been raised at the earliest possible opportunity and cannot now be properly raised after the ruling.
13. The applicant submitted that the suit is properly before the court, which has unlimited original jurisdiction under Article 165 of the *Constitution*. It acknowledged that the cause of action arose in Tharaka Nithi County, but averred that the dispute is subject to ongoing arbitral proceedings seated in Nairobi, before Hon. Sylvia Kasanga. As such, it argued that the High Court at Nairobi is the court with supervisory jurisdiction to grant interim measures under Section 7 of the *Arbitration Act*.
14. The applicant emphasised that this is not a traditional civil suit but an application for interim measures of protection pending arbitration under Section 7 of the *Arbitration Act*. It contended that Section 7 does not specify territorial limits, and any High Court has jurisdiction to grant interim measures without reference to geography.
15. The applicant argued that transferring the matter to Chuka would contravene the arbitration agreement between the parties and violate the principle of party autonomy, which is central to arbitration. Further, it contended that the respondent has not provided any evidence to support its claims of administrative burden or public expense.
16. The applicant pointed out that all proceedings have so far been conducted virtually, and no travel has been necessary. That its representatives and its advisors are all based in Nairobi, along with key documentation. That transferring the matter would therefore impose upon it logistical hardship, costs, and prejudice. It submitted that no prejudice will be suffered by the respondent if the matter proceeds in Nairobi. However, it would suffer injustice and delay if the matter were transferred.
17. Finally, the applicant alluded that the application is likely a delay tactic meant to frustrate the Applicant.
18. The applicant relied on:-
 1. [*Peter Wachira Gachura v Jakline Mbithe*](#) [2015] KEHC 5398
 2. [*Francis Ndichu Gathogo v Kitazi Ondaza*](#) (Civil Appeal No. 287 of 2002)
 3. *Riddlesburger & Another v Robson & Another* (1958) EA 375
 4. *Mwangi & another v Kassamali & 2 others* [2022] [KEHC14520](#)
 5. [*James Mangeli Musoo v Ezeetec Limited*](#) (2014)
 6. [*Co-Operative Bank of Kenya Ltd v Gikandi Ngibuini*](#) [2013] eKLR
 7. *David Kabungu v Zikarenga & 4 others* Kampala HCCS No. 36 of 1995



8. [*Oceanic Towers Limited v Hussein Builders Limited*](#) [2021] eKLR
9. [*Owners of the Motor Vessel "Lillian S" v Caltex Oil \(Kenya\) Ltd*](#) [1989] eKLR

Analysis and Determination

19. The respondent has challenged the jurisdiction of the court to determine this matter. And, sought the matter ought to be transferred to the High Court at Chuka.
20. In *David Kabungu v Zikarenga and 4 others Kampala* HCCS No. 36 of 1995 Okello J, held that:-

“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 motto 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 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, and if the Court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused... Want of jurisdiction of the Court from which the transfer is sought is no ground for ordering transfer because where the Court from which transfer is sought has no jurisdiction to try the case transfer would be refused”.

21. In [*Kirui \(Suing as the Chairman of Kessir Youth Bunge Self-Help Group\) v Kecha Sammy Matonyi t/ a Kibochi Ventures*](#) (Miscellaneous Civil Application E007 of 2023) [2023] KEHC 20720 (KLR) (21 July 2023) (Ruling), the court also appreciated that “Courts are further required to consider the real motive or character for transfer of a case from one Court to another.”
22. The root of this application is that the court lacks territorial jurisdiction over the dispute, which arose within Tharaka Nithi county.
23. The respondent relied on sections 12 and 18 of the [*Civil Procedure Act*](#) to support its application for the transfer of the matter.
24. Section 12 of the [*Civil Procedure Act*](#) provides that a suit ought to be instituted where subject matter is situated. Section 15 provides that subject to limitations, a suit shall be instituted in a court within the local limits of whose jurisdiction the defendant voluntarily resides or carries on business, or personally works for gain. Section 18 provides for the power of High Court to withdraw and transfer case instituted in a subordinate court.
25. In [*Francis Ndichu Gathogo v Evans Kitazi Ondansa*](#) CA Civil Appeal No. 287 of 2002 (Nyeri) (unreported), the Court of Appeal held as follows:

“The provisions of Section 15 are subject to the provisions contained in Sections 11, 12, 13, 14 and 15 of the Act and all these sections clearly deal with matters in subordinate courts.



Section 15 itself can only deal with matters in the subordinate courts. That was the holding of the Court of Appeal for East Africa way back in 1958 in the case of Riddlesbarger and another v. Robson & others [1958] EA 375 where the second holding of the court was that;

“(ii) S. 15 of the Civil Procedure ordinance [Act] applies only to subordinate courts”.

26. Article 165 (3) (a) of the *Constitution* provides that the High Court has unlimited original jurisdiction in criminal and civil matters. Article 165(5) of *Constitution* only limits the High Court’s jurisdiction over matters reserved for the Supreme Court and specialized courts under Article 162(2).
27. Therefore, sections 12, 15 and 18 of the *Civil Procedure Act* cannot be invoked to transfer a suit “from one High Court to another solely at the convenience of one of the parties.” *Gitau John Kimemia v Unilever Tea Company Ltd* [2007] eKLR
28. But, under the broader principles of justice and right to access to justice, and the general requirements that a suit be filed within the local limits of the subject matter or where the cause of action arose, or where the defendant resides or works for gain or is situated, the High Court may transfer the seat of hearing to another high court. As such, the contention that the court lacks territorial jurisdiction cannot stand. Devolution of power through the devolved system of government in the constitution requires services of a national character to be provided to the smallest units of devolved governments. The Judiciary has devolved its services to the counties to units that bring justice to the people. Therefore, it is fit and just that this matter is transferred to Chuka High Court for hearing and determination.
29. There is nothing in the arbitration agreement that denies the High Court sitting at Chuka the jurisdiction to try matters in these proceedings.

Disposal

30. In conclusion, the respondent’s application dated 15th May 2025 is allowed. The suit is transferred to Chuka High Court for hearing and disposal. No order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 3RD DAY OF JULY, 2025

F. GIKONYO M

JUDGE

In the presence of: -

Ms. Mwachoni for Alami for Applicant

Munene for Mwendani for Respondent

CA - Kinyua

