



City Manager County Government of Kisumu & 2 others v Matengo & 3 others (Miscellaneous Application E071 of 2025) [2025] KEHC 12645 (KLR) (17 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12645 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E071 OF 2025**

**A MABEYA, J
SEPTEMBER 17, 2025**

BETWEEN

**CITY MANAGER COUNTY GOVERNMENT OF KISUMU 1ST APPLICANT
COUNTY EXECUTIVE COMMITTEE MEMBER FOR TRADE COUNTY
GOVERNMENT OF KISUMU 2ND APPLICANT
COUNTY GOVERNMENT OF KISUMU 3RD APPLICANT**

AND

**JUDITH MATENGO 1ST RESPONDENT
JACKSON AWANDU 2ND RESPONDENT
DANIEL OKUMU 3RD RESPONDENT
KIBUYE MARKET MANAGEMENT COMMITTEE 4TH RESPONDENT**

RULING

1. This is a ruling on the Motion on Notice dated 29/4/2025 by the applicants. The same was made under Order 51 Rules 1 and 2 of the Civil Procedure Rules.
2. The Motion sought to transfer suit No. Winam SPMCC No. E096 of 2025 Hamilton Omondi Manyala & 3 Others v City Manager, County Government of Kisumu & 3 Others from Winam Magistrate’s Court to Kisumu Chief Magistrates Court. The grounds thereof were set out in the body of the Motion and the Supporting affidavit of Charles Omollo sworn on 29/4/2025.
3. The grounds were that; on the 10/6/2024 the Plaintiffs filed a suit against the Defendants in Kisumu CMCC E201 of 2024 claiming that the term of the Plaintiffs had not come to an end but would end on the 22/4/2025. That that on the 17/4/2025, a suit raising the same issues and involving the same parties was filed in the Winam Magistrates Court in SPMCC No. E096 of 2025 Hamilton Omondi



Manyala & 3 Others v City Manager, County Government of Kisumu & 3 Others. That the matter filed in the Kisumu Chief Magistrate’s Court should become the lead file as it was instituted first and that transferring the said suit from the Winam Court will save courts from embarrassment arising out of different decisions on the same subject matter.

4. The application was opposed vide the replying affidavit of Hamilton Omondi Manyala sworn on 3/7/2025. He deposed that the application was misconceived, legally incompetent, fatally defective and an abuse of court process and the orders sought are not merited in law.
5. That both the Chief Magistrate’s Courts at Kisumu and Winam are courts of concurrent jurisdiction and nothing bars parties from legitimately initiating proceedings where the cause of action arose. That the applicants have not demonstrated any real or imminent danger of conflicting decisions or judicial embarrassment as their claims are speculative and intended to block the respondents in the Winam SPMCC No. E096 of 2025.
6. That the claim of forum shopping is unfounded as the Winam suit was filed in good faith by different parties and on separate facts. That the mere fact that the suits touch on related subject matter does not warrant consolidation or transfer.
7. I have considered the record and the respective parties’ contestations. The power bestowed upon the High Court to transfer suits of a Civil nature is provided for in Section 18 of the [Civil Procedure Act](#) that stipulate thus: -

“(1) 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 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”.

8. A suit ought to be instituted in a court of the lowest grade that is competent to try it. This is provided in Section 11 of the [Civil Procedure Act](#) that provides thus: -

“Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that



he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts:

Provided that—

- i. if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court; and
- ii. nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same district”.

9. From the foregoing, it is clear that section 18 (1) (b) of the *Civil Procedure Act* gives the Court the general power to transfer all suits. This power may be exercised at any stage of the proceedings whether on application by any of the parties or even suo moto by the Court. Where it is to be exercised on application, 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.

10. As a general rule, the Court should not interfere with the parties’ preferred place of suing 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 an 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.

11. In this regard, some of the matters to be taken into consideration are, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the Court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application should 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 as the case would have been incompetent from inception.

12. In *Hangzhou Agrochemicals Industries Ltd v Panda Flowers Ltd (2012) eKLR*, the court observed: -

“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. 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. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case”.

13. I have considered that both the cases filed before the Kisumu Magistrates Court, Ksm CMCC E201 of 2024 filed on the 10/6/2024 and the one at the Winam Court Winam SPMCC No E096 of 2025 filed on the 17/4/2025 raise similar issues. Indeed, it is the same subject matter that is in issue. Further, it is not farfetched that there may be a likelihood of arriving at two different decisions by the two courts. Further, considering the overriding objective of the *Civil Procedure Act* as envisaged under sections 1A



and 1B thereof, it would be prudent to facilitate a just, expeditious and proportionate use of judicial manpower available. This can be achieved if both cases are tried in the same Court and together.

14. Accordingly, I find that it in the interests of justice and for the convenient administration of justice that the respondent's suit filed in Winam Senior Principal Magistrates Court in SPM No. E096 of 2025 be transferred to the Kisumu Chief Magistrates Court for trial and determination. The same should be consolidated with the CMCC NO. E201 of 2024.
15. Accordingly, the Court finds merit in the application dated 29/4/2025 and the same is allowed as prayed with the directions that the same be consolidated with the Ksm CMCC E201 of 2024. Costs to be in the cause.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 17TH DAY OF SEPTEMBER, 2025.

A. MABEYA, FCI Arb

JUDGE

