



**Mbatia v Ngigi (Civil Miscellaneous Application E020 of 2024)  
[2024] KEHC 10836 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10836 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL MISCELLANEOUS APPLICATION E020 OF 2024  
LM NJUGUNA, J  
SEPTEMBER 18, 2024**

**BETWEEN**

**FAITH WAWIRA MBATIA ..... APPLICANT**

**AND**

**CESILY WANJIKU NGIGI ..... RESPONDENT**

**RULING**

1. The applicant filed a notice of motion dated 12<sup>th</sup> April 2024, being supported by the grounds set out on its face and the facts deposed in the supporting affidavit thereof. The orders sought are as follows:
  1. That the honourable court be pleased to transfer the hearing and determination of Embu CMCC No E007 of 2023 to Siakago Law Courts for hearing and determination; and
  2. That the costs of this application be provided for.
2. The applicant filed the suit in question seeking judgment against the respondent for the liquidated sum of Kshs 4,000,000/=. The applicant obtained *ex-parte* judgment in default of appearance and defense on 25<sup>th</sup> May 2023. The respondent filed an application seeking to set aside the *ex-parte* judgment on the grounds that the court lacked territorial jurisdiction to determine the claim and that it ought to be placed transferred to Siakago Law Courts. The applicant stated that through a ruling delivered on 31<sup>st</sup> January 2024, the court set aside the *ex-parte* judgment and stated that the suit ought to be filed in Siakago Law Courts. That the application herein seeks to give effect to these orders of the lower court.
3. The respondent indicated to the court that he had filed a preliminary objection to the application but the same is not in the court records. The applicant filed a further supplementary affidavit through which he produced a copy of the lower court ruling delivered on 31<sup>st</sup> January 2024.
4. This court directed the parties to file their written submissions but only the applicant complied.



5. In her submissions, the applicant stated that the lower court found that it lacked territorial jurisdiction and so it referred the matter to the high court for transfer to the relevant court. That there were no final orders made in the lower court since the court set aside its own orders pending the high court's decision. She relied on section 18 of the [Civil Procedure Act](#) and the case of [Waweru v Prime Auto Solution Limited](#) (2024) eKLR and urged the court to transfer the suit to the court with the relevant territorial jurisdiction in the interest of the overriding objective.
6. The issue for determination is whether the application has merit.
7. Section 18 of the [Civil Procedure Act](#) provides:-
 

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.
8. This provision states that the transfer of a suit may be ordered at any stage. In the present case, the trial court had entered *ex-parte* judgment but the said judgment was set aside. The application herein raises the issue of territorial jurisdiction only and the applicant argued that the subject matter of the suit is a children's home located in Siakago. Section 15 of the [Civil Procedure Act](#) provides:
 

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 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 acquiesce in such institution; or
  - c. The cause of action, wholly or in part arises.
9. In the case of [Julius Lekuruito & another v Nottingham Mwangi & another](#) (2018) eKLR, the court held:-
 

“Under Section 17 and 18 of the Act, upon an application by a party, or on its own motion, the High Court may transfer the suit to another subordinate court with territorial jurisdiction, when justice of the case demands such action.”

(see also the case of [Waweru v Prime Auto Solution Limited](#) (2024) eKLR)
10. In the spirit of the overriding objective and section 159(2)(d) of the [Constitution](#) and the circumstances of this case, it is only prudent to have the suit transferred to Siakago for retrial considering that the trial court's judgment was set aside.



11. The application is therefore, merited and it is hereby allowed. Embu CMCC No E007 of 2023 is hereby transferred to Siakago Law Courts for disposal.
12. There shall be no order as to costs.
13. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**L. NJUGUNA**

**JUDGE**

..... for the Applicant

.....for the Respondent

