



REPUBLIC OF KENYA



KENYA LAW
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**Mukoya v Karugo (Miscellaneous Application 11 of 2024)
[2024] KEHC 12990 (KLR) (Family) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12990 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION 11 OF 2024
PM NYAUNDI, J
OCTOBER 18, 2024**

BETWEEN

BENSON LUTTA MUKOYA APPLICANT

AND

SARAH HUMBU KARUGO RESPONDENT

RULING

1. By Notice of Motion dated 20th March 2024 and presented under Sections 15, 17 & 18 of the [Civil procedure Act](#) and Order 50 rule 1 of the Civil Procedure Rules, the applicant herein seeks the following orders-
 1. Spent
 2. Spent
 3. That this Honourable Court be pleased to transfer Nairobi Divorce Cause No. E1568 of 2023 for hearing and disposal before the Chief Magistrate’s Court at Naivasha.
 4. That costs of this application be provided for.
2. The Application is based on the grounds on the face of the application and supported by the Affidavit of the Applicant sworn on 20th March 2024. The Respondent opposes the Application and has sworn an affidavit on 5th June 2024 in opposition.
3. The Applicant avers that he is resident in Naivasha and that pursuant to Section 15 of the [Civil Procedure Act](#), the matter ought to have been filed in Naivasha. The Respondent on her part opposes the application on the basis that the marriage was celebrated in Nairobi and that they first established their matrimonial home in Nairobi before relocating to Naivasha. It is further submitted that in his



answer to Petition and Cross Petition the Applicant conceded to the jurisdiction of the Court in Nairobi .

4. Finally, the Respondent avers that in view of the electronic case management system the Applicant can opt to participate virtually and that should address his concerns related to distance and attendant costs. In any event event it is submitted on the authority of the decision in *David Kabungu v Zikamunga & 4 Others* HCCC No. 36 of 1996 (Ugandan High Court) that the Applicant has not met the threshold for granting of the orders sought.
5. Having considered the pleadings, submissions filed, authorities cited and the relevant law, I find that the Applicant has not met the threshold for the grant of the orders sought.
6. Section 15 of the *Civil Procedure Act* provides the factors that will determine where a matter should be filed, they are all at par, none ranks superior to the other. In this matter, the cause of action arose in Nairobi. Section 15 (c) recognizes this as one of the determinants of where a matter should be filed.
7. In his answer to the Petition and Cross Petition, the Applicant concedes to the jurisdiction of the Court. The Applicant alleges that the matter proceeding in Nairobi while he resides in Naivasha occasions great inconvenience, loss, hardship and expense to him but has not substantiated this claim. The Court can not extrapolate based on its own assumptions.
8. For this reason the Application is dismissed with costs to the Respondent.

DELIVERED ON THE VIRTUAL PLATFORM, DATED AND SIGNED AT NAIROBI THIS 18th DAY OF OCTOBER, 2024.

PATRICIA NYAUNDI

JUDGE

In the Presence of:

Court Assistant: Fardosa

