



**Ewaton v Registered Trustees Muslim Association Jamia Mosque Community Eldoret & 3 others (Miscellaneous Case 104BB of 2023) [2023] KEHC 3570 (KLR) (19 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3570 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CASE 104BB OF 2023  
RN NYAKUNDI, J  
APRIL 19, 2023**

**BETWEEN**

**SULEIMAN ABDALLA EWATON ..... PLAINTIFF**

**AND**

**THE REGISTERED TRUSTEES MUSLIM ASSOCIATION JAMIA MOSQUE  
COMMUNITY ELDORET ..... 1<sup>ST</sup> APPLICANT**

**ABDULAI JAMA ..... 2<sup>ND</sup> APPLICANT**

**ABDI OMAR ..... 3<sup>RD</sup> APPLICANT**

**INDRIS KAITANY ..... 4<sup>TH</sup> APPLICANT**

**RULING**

1. This matter found its way to the High Court by virtue of an order made by the learned Chief Magistrate of Eldoret Law Courts on November 9, 2022 to the effect that the court exercises its inherent jurisdiction and the provisions of section 18 one of the [Civil Procedure Act](#) to transfer the case file out of Eldoret territorial jurisdiction to another concurrent subordinate court to hear and determine the justiciable issues between the plaintiff and the defendant. I have since appraised the fulminous record dating back to September 16, 2015. I am amazed that parties have been litigating on interlocutory applications without going to the root cause of the dispute and have it adjudicated on the merit. It is also true that many judicial officers under Article 50(1) of the [Constitution](#) have had an occasion to hear and rule on all of those applications save for one or two. The record further speaks for itself that the plaintiff in most instances has been aggrieved with the various session magistrates. This to me prompted the Chief Magistrate to down his tools and seek refuge with the High Court to exercise its jurisdiction under Section 18 of the [Civil Procedure Act](#) to enable the plaintiff try his luck elsewhere.



## Resolution

2. When can the High Court transfer a case under Section 18 of the *Civil Procedure Act*. The guidelines are set out as follows:
  - a) Transfer any suit appeal or other proceedings 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 any other proceedings pending in any court subordinate to it and thereafter
    - i. Try and 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 and disposal to the court from which it was withdrawn

2. When any suit or proceedings that 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.
3. The courts have developed jurisprudence in construing Section 18 of the Act revolve around the following factors for transfer of a case from the session magistrate to another within the same jurisdiction or outside that territorial jurisdiction:
  1. For expedient for the ends of justice to be met.
  2. Partiality
  3. Cross connected cases pending in some other court
  4. Backlog reduction
  5. Conflict of interest etc.
  6. Where one party is apprehensive that justice will not be done before that session judge.
4. I have gone to great lengths to conduct in in-depth inquiry of the subject matter and the records of the various session magistrates at Eldoret subordinate court. There are no substantial questions of law which cannot be determined by the magistrate who have been allocated the Plaintiff's case docket. The courts have exercised their jurisdiction over the subject matter as provided for in the Magistrate's Court Act and the powers donated in Article 50 (1) of the *Constitution*. There is no evidence that any Judicial officer has involved himself or herself with the litigating parties to raise reasonable apprehension of impartiality or fairness of the trial. It is not lost that the power of transfer under Section 18 of the Act must be exercised with due care, caution and circumspection and above all for the interests of justice.
5. Looking at the entire record the root of the grievance by the Plaintiff is wanting when weighed alongside the condition precedence expressly stated in Section 18 of the *Civil Procedure Act*. The remedial duty of this court is to retransfer the case file to the Chief Magistrate's Court to appoint and allocate the matter to one of the newly transferred magistrates to hear and determine any peculiar circumstances of the cause of action by the plaintiff. It is further directed that the appointed session magistrate exercising his or her jurisdiction thereof applies case management principles to mitigate any inordinate delay occasioned by any of the parties to the suit. Having said so a guideline of 90 days period be a period within which this claim should have been finalized before the subordinate court.



Further mention on May 4, 2023 before the Chief Magistrate Eldoret to initiate the reactivation of this proceedings.

It is so ordered

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 19<sup>TH</sup> DAY OF APRIL 2023**

**In the Presence of the Plaintiff**

.....

**R. NYAKUNDI**

**JUDGE**

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