



**Njoroge v Karimi (Miscellaneous Civil Application E063 of 2023)  
[2023] KEHC 21556 (KLR) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21556 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS CIVIL APPLICATION E063 OF 2023**

**PM MULWA, J  
AUGUST 3, 2023**

**BETWEEN**

**ROBINSON WANGO NJOROGE ..... APPLICANT**

**AND**

**LYDIAH WANGUI KARIMI ..... RESPONDENT**

**RULING**

1. This is a Notice of Motion application dated May 18, 2023, brought under Sections 1A, 1B, 3A, 7 and 18 of the *Civil Procedure Act*, Order L Rule 1 of the *Civil Procedure Rules* and all other enabling provisions of the law. The applicant seeks stay of the proceedings in Thika SCCCOMM E449 of 2023, withdrawal of the proceeding as well as the transfer of the proceedings from the Small Claims Court to the Chief Magistrate’s Court.
2. The gist of the application is that the Small Claims Court lacks the jurisdiction to hear and determine the matter as the subject matter exceeds its pecuniary jurisdiction. The applicants will be highly prejudiced if the matter proceeds in the Small Claims Court. That the Respondent will not suffer prejudice if the matter is transferred to the Chief Magistrate’s Court.
3. The application is supported by the annexed affidavit of Robinson Wango Njoroge, he depones that the respondent from the amended statement of claim seeks judgment of Kshs 570,000/= from the applicant while vide his defence and counter claim he claims judgment in the sum of Kshs 1, 850,000/= from the respondent. That this amount is above the pecuniary jurisdiction of the Small Claims Court, hence the application. It is contended that the applicant is apprehensive the Small Claims Court will determine the matter within 60 days and thus will not be able to lodge his claim thereafter.
4. In opposing the application, the respondent Lydia Wangui Kamau filed the Replying affidavit sworn on June 2, 2023, wherein she depones that the application is devoid of merit and an abuse of the process



of the court. The counter claim is based on fraud and misrepresentation on facts, the agreement was entered into voluntarily between the applicant and the Respondent.

5. The application was heard by way of written submissions. The applicant filed submissions on June 7, 2023 while the respondent filed submissions on June 12, 2023.

### **Applicant's submissions**

6. Counsel for the applicant urged the court to exercise its supervisory jurisdiction over the subordinate courts as enshrined under Article 165 of the Constitution and give directions as it may consider appropriate.
7. He submitted that while the trial court has jurisdiction to enter into an inquiry on the matter in dispute it lacks the jurisdiction to grant the counter claim in full. He urged the court to grant the orders sought.

### **Respondent's submissions**

8. It was submitted for the respondent that the applicant had failed to demonstrate a strong case that warrants the transfer of the suit. Want of jurisdiction in Small Claims Court is no ground for transfer of proceedings. Case cited - Gaikia Kimani Kiarie vs Peter Kimani Kiramba (2020) eKLR where the court held: "if the court has no jurisdiction over the matter when the claim was filed, it would then mean that the said Counter Claim by the Defendant is a nullity in law and as the suit is incompetent and the court does not have jurisdiction to transfer the matter..."
9. In conclusion counsel urged the court to find that it lacks jurisdiction to order the transfer of the claim from the small Claims Court.

### **Analysis and determination**

10. I have considered the application, the affidavit in response and the rival submissions. The issue for determination is whether this court should transfer SCCCOMM E449 of 2023 from the Small Claims Court to the Chief Magistrate's Court.
11. Section 12(3) of the Small Claims Court Act provides the pecuniary jurisdiction as Kshs 1,000,000/=.
12. The issue in dispute is that by a counter claim the applicant claims from the plaintiff/respondent a sum of Kshs 1,850,000/= which exceeds the pecuniary jurisdiction of the small claims court.
13. Rule 34 of the Small Claims Court Rules deals with the power to transfer proceedings from the Small Claims Court. The rules provides that:
  1. Where a claimant files a claim outside the local limits of the jurisdiction of the court nearest the respondent's ordinary place of business or residence, or where the transaction or event giving rise to the claim occurred, the respondent may apply to the court in writing for orders that the proceeding be transferred—
    - a. to the court nearest the respondent's place of business, or nearest the place where the respondent ordinarily resides; or
    - b. To the court nearest the place where the transaction or event giving rise to the claim took place.
  2. The Court shall not transfer any proceeding on the request of a party under this rule unless—



- a. The party making the request has disclosed reasonable grounds to the satisfaction of the Court to justify the transfer; and
    - b. before making its decision, the Court has heard the other parties in response to the request.
  3. Nothing in this rule prevents parties from requesting the Court to transfer any proceeding to any other station of the court by consent of the parties.
14. In the dispensation of justice, Article 165(6) of the Constitution confers upon the High Court jurisdiction to transfer a matter to and from the Small Claims Court. The transfer may be exercised at any stage on its own motion or through the application by either party. The applicant should however demonstrate that there are sufficient reasons for the transfer.
  15. In the case of Hangzhou Agrochemicals Industries ltd –Vs Panda Flowers Ltd (2012) eKLR the court held
 

“...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”.
  16. The issue of jurisdiction is key in the dispensation of justice and without jurisdiction the court should down its tools as aptly stated in *Owners of Motor Vessel "Lilians" vs. Caltex Oil (K) Ltd* [1989] KLR 1:
 

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
  17. The pecuniary jurisdiction of the Small Claims Court having been set at Kshs 1 Million, it is not in dispute that the amount of Kshs 1,850,000/= as claimed in the counter claim exceeds the pecuniary jurisdiction of the that court.
  18. It is important to note before the counter claim, the Small Claims Court was vested with the jurisdiction to determine the matter as the plaintiff/respondent had filed the suit claiming Kshs 570,000/= from the defendant/applicant for breach of contract. The lack of jurisdiction by the Small Claims Court has been brought by the existence of new circumstances after the suit was filed.
  19. Section 18(1) (b) 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...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.”

20. It is apparent that this court is clothed with the jurisdiction to order a transfer of a suit. Therefore, In the exercise of its supervisory jurisdiction the court considers that justice will properly be served if the parties are allowed to ventilate their issues in a court vested with the jurisdiction.

21. In the circumstances, this court finds that it is in the interest of justice that Thika SCCCOMM E449 of 2023 be transferred from the Small Claims Court to the Chief Magistrate’s Court in Thika for final disposition.

22. The application dated May 18, 2023 is merited and is allowed as follows:

- i. Thika SCCCOMM No. E449 of 2023 be and is hereby transferred to Thika Chief Magistrate’s Court for final disposition on a priority basis.
- ii. The costs of the application to abide by the outcome of trial.

It is so ordered.

**RULING delivered virtually, dated and signed at Kiambu**

**This 3<sup>rd</sup> day of August 2023.**

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**P.M. MULWA**

**JUDGE**

**In the presence of:**

Duale – court assistant

Mr. Odek h/b for Mr. Ng’ang’a - for the applicant

Ms. Mugo h/b for Mr. Kanyiri - for the respondent

