



Hilton (Suing as the personal representative of the Estate of Mary Ndawa Mwandisha (Deceased) v Modern Coast Coaches Ltd (Miscellaneous Civil Application E013 of 2023) [2023] KEHC 23447 (KLR) (12 October 2023) (Ruling)

Neutral citation: [2023] KEHC 23447 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS CIVIL APPLICATION E013 OF 2023
LW GITARI, J
OCTOBER 12, 2023**

BETWEEN

EVANGELINE MWANDISHA HILTON (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF MARY NDAWA MWANDISHA (DECEASED) APPLICANT

AND

MODERN COAST COACHES LTD RESPONDENT

RULING

1. Before this court is the notice of motion application dated July 20, 2023 that was filed under a Certificate of Urgency. The Application is expressed to be brought substantially under the provisions of section 18 of the *Civil Procedure Act*, 2010, Laws of Kenya. The applicant herein, Evangeline Mwandisha Hilton, seeks the following orders:
 - i. That this honourable court be pleased to issue an order transferring Chuka Civil Suit No. E258 of 2022 to Chuka High Court for trial and disposal.
 - ii. That the cost of this application be in the cause.
2. The Application is premised on the grounds that:
 - i. The applicant filed Chuka Civil Suit No. E258 of 2022 for general and special damages arising out of a road traffic accident.
 - ii. Upon keen perusal of the pleadings and analysis of the damages to be paid, the applicant is of the view that the award will be more than Kshs. 20,000,000/= which will be above the pecuniary jurisdiction of the Magistrate's court.



- iii. The deceased was a doctor by profession and met her untimely death at the age of 28 years while earning Kshs. 200,000/= per month.
 - iv. It will be fair and just for this honourable court to transfer this matter to this honourable court for trial and disposal.
3. The Application is supported by the applicant's affidavit that is undated and his supplementary affidavit sworn on August 16, 2023. Both affidavits are sworn by Mwazighe Micar, an advocate of the High Court of Kenya and the advocate on record for the Applicant.
 4. On July 31, 2023, Mr. Hymo, learned counsel, appeared before this court and requested for seven (7) days to respond to the instant Application on behalf of the Respondent. Directions were given on the same day by this court to the effect that the respondent was to file its response to the Application within seven (7) days and serve the same on the applicant and that the Application to be canvassed by way on written submissions.
 5. When the matter came up on September 18, 2023 to confirm compliance with the aforesaid directions, the Applicant confirmed that they had filed their submissions. On the other hand, counsel for the Respondent requested for 14 days to file its response and submissions. This court ruled that since the counsel for the respondent had not complied with court's directions, their submissions would be out of time. The Court thus declined to give the respondent time to file their response and today's date (October 12, 2023) was set giving of the ruling on the Application.
 6. I have considered the Notice of Motion Application dated July 20, 2023, the affidavits in support of the said Application as well as the submissions by the Applicant. The only issue that arises for this court to determine is whether the instant Application is should be allowed.

Analysis

7. The jurisdiction of the High Court to transfer suits from one court to another is provided under section 18 of the [Civil Procedure Act](#) which provides as follows:-

“

- “(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.”

This provision vests the jurisdiction to transfer suits from the sub-ordinate. The power may be exercised by the High Court on its own motion or upon application by any of the parties in the suit. In a persuasive decision.

8. In the case of *David Kabungu v Zikarenga & 4 others Kampala* HCCS No. 36 of 1995, the court had the following to say on the circumstances under which the order to transfer suits may be granted:-

“Section 18(1) of the *Civil Procedure Act* gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. 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 relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice or the suit has been filed in a particular court for the purposes of working injustice. What the court has to consider is whether the applicant has made a case to justify it in closing doors of the court on which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction It is a well established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are balance of convenience, questions of expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication must 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 could be refused.....”

9. From the above provision and persuasive authority, it follows that the burden lie on the applicant to make out a strong case for the transfer of the case to this court. From the copy of the plaint in the suit before the subordinate court, it is clear that the applicant herein is seeking general and special damages following a fatal road accident. In the present Application, the applicant has attached copies of the deceased’s Internship License for Medical and Dental Practitioners, her Bachelor’s degree in Medicine and Surgery from the University of Nairobi, her Certificate of Registration as a Medical Practitioner by the Kenya Medical Practitioners and Dentists Council and her Compliance Certificate from the Higher Education Loans Board. The Applicant has further produced a copy of the Limited Grant of Letters of Administration Ad Litem authorizing her to represent the deceased for the purpose of instituting a suit in court on behalf of the deceased. Finally, the Applicant has produced copies of the deceased’s certificate of death and contract of employment with Afri Hospitals Holdings Limited (Life Care Hospitals).
10. It was submitted on behalf of the Applicant that the Applicant lost her daughter who was a doctor and met her untimely death at the age of 28 years old following a fatal road traffic accident. That the deceased was earning Kshs. 200,000/= per month and as such, the award that is likely to be granted by the court will be higher beyond the pecuniary jurisdiction of the magistrate’s court. Further, that



applicant's only prayer before this court at present is for the transfer of her suit, the same being Civil Suit Case No. E258 of 2022 to this court for hearing and determination.

11. As per the plaint, on or about July 24, 2022, the deceased was a fare paying passenger in the motor vehicle registration number KCF 641U when the said motor vehicle got involved in an accident that led to the deceased's death. The death certificate produced by the applicant indicates that the deceased was 28 years old. The contract of employment produced indicates that the applicant was employed by Afri Hospitals Holdings Limited (Life Care Hospitals) and was earning a gross pay of Kshs. 200,000/= per month. Based on this evidence, I am convinced that if the matter proceeds before the magistrate's court, the applicant could receive a lesser award than that which the law provides that she is entitled to as the award of damages likely to be awarded may exceed the pecuniary jurisdiction of the Chief Magistrate which is Kshs.20,000,000/-.
12. In my view, the applicant herein has made out a strong case necessitating the transfer of this matter from the subordinate court to this court for hearing and determination. It is further my view that the present Application was brought without undue delay and the orders sought will not occasion any prejudice to the Respondent.
13. From the foregoing, I opine that the present Application is merited and should be allowed by withdrawing Chuka Civil Suit No. E258 of 2022 from the Subordinate Court and transferring the same to this Court.

In Conclusion:

14. I find that the application has merits. I order as follows:-
 1. The Chief Magistrate's Court Chuka Civil Case No. E258/2022 shall be transferred to this court forthwith.
 2. The Deputy Registrar to have them, filed given a new number in the High Court.
 3. The matter shall then be mentioned before this court for directions.
 4. I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 12TH DAY OF OCTOBER 2023.

L.W. GITARI

JUDGE

