



**JB v NKC (Miscellaneous Application E253 of 2023)  
[2023] KEHC 23735 (KLR) (18 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23735 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS APPLICATION E253 OF 2023  
HM NYAGA, J  
OCTOBER 18, 2023**

**BETWEEN**

**JB ..... APPLICANT**

**AND**

**NKC ..... RESPONDENT**

**RULING**

1. Vide an application dated July 28, 2023 brought under Section 1A,1B and 3A of the [Civil procedure Act](#) and Order 51 Rule 1 of the [Civil Procedure Rules, 2010](#), the Applicant seeks one substantive prayer;
 

That the Honourable Court be pleased to transfer Eldama Ravine PMCC Children Case No MCCHCC/E1 of 2020 from the Chief Magistrate’s court to Nakuru Chief Magistrates Court itself and try and/or dispose of the same.
2. The grounds stated were as follows —
  - a. That Eldama Ravine Pmcc Children Case No MCCHCC/E1 of 2020 was erroneously filed in the Chief Magistrate’s Court.
  - b. That the cause of action arose at Junction Sub location, Rongai Sub County within the local limits of the jurisdiction of the Principal Magistrate’s court at Nakuru which is the lowest court of competent jurisdiction to hear and dispose of the suit herein.
  - c. That parties herein are residents of Rongai within jurisdiction of the Principal Magistrate’s Court at Nakuru therefore it will serve the ends of Justice if the suit is transferred.
  - d. That there will be no prejudice to the plaintiff should the order sought be granted.
3. The Application is supported by the Affidavit of the applicant, Jane Barus dated July 28, 2015. She avers that both parties reside within Nakuru County as she resides in Rongai while the Respondent



resides at Rongai where the cause of action arose therefore the best placed court to hear the case is the Nakuru Court.

4. She depones that at the time of filing the plaint, the respondent was not accurate with information pertaining him working and residing in Eldama Ravine, as this is far from the truth, thus leading the plaint erroneously being instituted in the Chief Magistrate's court at Eldama Ravine, while the same ought to have been filed in Nakuru. She states that this error was not noticed on time.
5. She depones that it is not in the best interest of the children in question to travel to Eldama Ravine as it will occasion them undue hardship causing interference with their education schedules and also a lot of expenses.
6. She states that it is in the interest of justice that parties be heard by the appropriate court.
7. Though duly served, the Respondent did not file any response to the application.

### **Analysis & Determination**

8. Having considered the Application, grounds thereto and the supporting affidavit, the issue for determination is whether the suit filed in Eldama Ravine i.e. PMCC Children Case No MCCHCC/E1 of 2020 should be transferred to Nakuru Chief Magistrate Court for hearing and determination.
9. Article 165(6) and (7) of *the Constitution* provides that:
  - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
  - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
10. Section 18 (1) (b) of *Civil Procedure Act* gives the High Court unfettered powers to transfer any suit from one Subordinate Court to another Subordinate Court which has jurisdiction to hear and determine the matters. The said section 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 if its own motion without such notice, the High Court may at any stage.”
  - (b) Withdraw any suit or other 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.”
11. It is clear therefore that the High Court has power to order for a transfer of a case from one subordinate court to another. In so doing, this court is guided by the Overriding Objective as provided under Section 1A.
12. This court is alive that the transfer a matter from one court to another with jurisdiction to try it must be aimed at facilitating the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the *Civil Procedure Act*. Further, under Section 1B of the *Civil Procedure Act* in furtherance of the overriding objective above, this court shall handle all matters presented before it for the purpose of attaining the following aims:



- (a) the just determination of the proceedings;
  - (b) the efficient disposal of the business of the Court;
  - (c) the efficient use of the available judicial and administrative resources;
  - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
  - (e) the use of suitable technology
13. Circumstances that would move a court to grant the order sought were considered in the *David Kabungu v Zikarenga & 4 others*, Kampala HCCS No 36 of 1995 where Okello J stated that;

“Section 18 (1) (b) 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 a 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. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction... it is 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 expense, interest of justice and possibilities of undue hardship, and 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... 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 would be refused...”

14. In the case of *Hangzhou Agrochemicals Industries ltd v Panda Flowers Ltd* (2012) eKLR the court addressed conditions to be considered in determining whether or not to grant an order transferring a suit, thus:

“..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”.

15. I have considered this matter. The Applicant has explained that the reason for filing the suit at Eldama Ravine was occasioned by the Respondent’s inaccurate information in regards to his place of work and residence. The Applicant contends that the correct position is that the Respondent resides at Rongai which is within Nakuru County. The cause of action therefore arose within Nakuru Jurisdiction. The



applicant had, in paragraph 13 of her defence denied that the court in Eldama Ravine had jurisdiction to determine the suit. The applicant had also made an application dated October 26, 2020 seeking several orders and the enforcement thereof by the OCS, Menengai Police Station, Nakuru County. It is not clear if the jurisdictional issues were raised and addressed by the trial court.

16. Under Section 15 of the *Civil Procedure Act*, a suit like the one under consideration shall be instituted in a court within the local limits of whose jurisdiction 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. The Applicant has satisfied this court that she resides at Kiamunyi within Nakuru County. Further and most fundamentally, the Suit involves children. These children reside with the Applicant at Kiamunyi which is within the jurisdiction of the Children Court, Nakuru. The interest of the children is paramount. I find that it will be in the interest of justice to have a case involving them determined in Nakuru.
17. Having taken into consideration the questions of travel expense, interests of justice and possibilities of undue hardship on both the Applicant and the children, I am satisfied that the Applicant has made a strong case for the transfer of the suit. The balance of convenience tilts in her favour.
18. By granting the orders sought in this application, this court will be furthering the Overriding Objective of the *Civil Procedure Act* under Section 1A of that Act. No prejudice will be suffered by any party, in my view, and the move will only shorten their travel time. I also note that by transferring this matter, this court will be acting in consonance with the provisions of section 15 of the *Civil Procedure Act*.
19. For the foregoing reasons, the application succeeds and I order that Eldama Ravine Children Case No E001 of 2020 be transferred to the Children Court, Nakuru Law Courts for hearing and determination. This order is to be served on the court at Eldama Ravine for compliance.
20. I order each party to bear their own costs of this application.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 18<sup>TH</sup> DAY OF OCTOBER, 2023.**

**H. M. NYAGA,**

**JUDGE.**

**In the presence of;**

C/A Jeniffer

Miss Awuor for Applicant

N/A for Respondent

