



**Wanjala v Namwamba & another (Miscellaneous Civil Application  
E730 of 2024) [2024] KEHC 15587 (KLR) (Civ) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15587 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**MISCELLANEOUS CIVIL APPLICATION E730 OF 2024**

**CW MEOLI, J**

**DECEMBER 5, 2024**

**BETWEEN**

**HON RAPHAEL SAUTI WANJALA ..... APPLICANT**

**AND**

**TOM NAMWAMBA ..... 1<sup>ST</sup> RESPONDENT**

**THE STANDARD GROUP LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. For determination is the motion dated 29.07.2024 by Hon. Raphael Sauti Wanjala (hereafter the Applicant) seeking that the Court be pleased to recall and transfer the suit now designated as Milimani CMCC Case No. 109 of 2023 – *Hon. Raphael Sauti Wanjala v Tom Namwamba & Standard Group Limited* from the Magistrates Court to the Civil Division of the High Court at Nairobi Milimani; and upon granting the above prayer, to be pleased to direct that the case otherwise known as Milimani CMCC Case No. 109 of 2023 – *Hon. Raphael Sauti Wanjala v Tom Namwamba & Standard Group Limited* be reinstated as Nairobi Milimani High Court Civil Case No. 201 of 2018 – *Hon. Raphael Sauti Wanjala v Tom Namwamba & Standard Group Limited*. The motion is expressed to be brought inter alia pursuant to Article 165(3)(a) and (7) of the [Constitution](#) and Section 1A, 1B, 3, 3A, 17 & 18 of the [Civil Procedure Act](#) (CPA). And premised on the grounds on the face of the motion thereof as amplified in the supporting affidavit sworn by Applicant.
2. The gist of his deposition is that on or about 16.08.2018 he his suit, namely, Milimani HCCC No. 201 of 2018 in this court, and that despite service of summons to enter appearance upon Tom Namwamba (hereafter the 1<sup>st</sup> Respondent), the latter failed to enter appearance resulting in interlocutory judgment being entered against him on 28.11.2019. That the 1<sup>st</sup> Respondent thereafter filed a motion dated 30.11.2022 seeking to set aside the said interlocutory judgment, which motion



the Applicant vehemently opposed. He goes on to state that his suit was on 13.04.2023 transferred by the High Court to the Chief Magistrates Court before the motion by the 1<sup>st</sup> Respondent had been heard. He deposes further that the Magistrates Court lacks jurisdiction to set aside and or review the order and or interlocutory judgment issued by the High Court and that the Magistrate who handled the matter on 26.10.2023 asserted as much. Making it necessary that this Court recalls the subject suit, where expected damages against the Respondents may exceed Kshs. 20,000,000/-, which is above the pecuniary jurisdiction of the subordinate Court. In conclusion he deposes that the 1<sup>st</sup> Respondent and Standard Group Ltd (hereafter the 2<sup>nd</sup> Respondent) will suffer no prejudice if the orders sought herein are granted.

3. The 1<sup>st</sup> Respondent, intimated through counsel that he would not oppose the motion whereas the 2<sup>nd</sup> Respondent did not participate in the instant proceedings.
4. Directions were taken on disposal of the motion on the basis of the affidavit material in support thereof. Alongside the prayer for retransfer of Milimani CMCC Case No. 109 of 2023 to this Court, the Applicant has equally sought reinstatement of the suit originally filed before this Court as Milimani HCCC No. 201 of 2018.
5. As earlier noted, the motion saliently invokes inter alia the provisions of Article 165(3)(a) & (7) of the Constitution and Section 3A, 17 & 18 of the Civil Procedure Act (CPA). Article 165(3)(a) of the Constitution provides for the High Court's unlimited original jurisdiction on criminal and civil matters whereas Clause (7) of the same Article reserves the jurisdiction of the High Court to call for the record of proceedings before any subordinate Court or person, body or authority exercising judicial or quasi-judicial functions and make any order or give any directions it considers appropriate to ensure the fair administration of justice. Section 3A of the CPA on its part reserves the inherent power of the Court to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the Court. Meanwhile, Section 18 of the CPA provides that: -
  - (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.
6. With the above provisions in reserve, the Court proposes to contemporaneously address the twin prayers for the transfer of Milimani CMCCCCase No. 109 of 2023 and reinstatement of Milimani HCCC No. 201 of 2018. The Applicant's motion stems from an order of this Court issued on



- 13.04.2023. The order was issued pursuant to this Court exercising its mandate per Sections 11 and 18(1) (a) of the CPA and transferring the subject suit to the Chief Magistrate’s Court. The motion is properly predicated inter alia on Section 3A of the CPA. The purport of the Section was addressed by the Court of Appeal in Rose Njoki King’au & Another v Shaba Trustees Limited & Another [2018] eKLR.
7. It is also settled that the discretion of the Court to set aside an order, for that is essentially what the Applicant is essentially seeking by his motion, is wide and unfettered. A successful applicant is however obligated to adduce material upon which the Court should exercise its discretion, or in other words, the factual basis for the exercise of the Court’s discretion in their favor. In the case of Shah –vs- Mbogo and Another [1967] E.A 116 the rationale for the discretion was spelt out as follows: -
- “The discretion to set aside an ex-parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but it is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice.”
8. The principles enunciated in Shah –vs- Mbogo (supra) were amplified further by Platt JA in Boucharde International (Services) Ltd vs. M’Mwereria [1987] KLR 193. Although the Courts in the above cases were contemplating applications to set aside ex-parte judgments, the principles pronounced therein would apply in equal degree in this matter. In the instant proceedings, the Applicant relies on grounds that interlocutory and or default judgment was entered as against the 1<sup>st</sup> Respondent before the High Court (Annexure marked RSW-4) and motion for setting aside the said judgment (Annexure marked RSW-5) filed prior to the order of transfer. Hence, the lower Court lacks the authority or power to set aside the interlocutory and or default judgment entered by the High Court on 28.11.20219. A fact allegedly confirmed by the lower court on 26.10.2023. Moreover asserting that the suit is likely to yield damages against the Respondents amounting to more than Kshs. 20,000,000/-, which exceeds the pecuniary jurisdiction of the subordinate Court.
9. As earlier noted, this Court’s mandate and or authority to transfer a matter to a competent subordinate Court is donated by Section 18(1)(a) of the CPA. The Applicant’s affidavit material does not include the pleadings of the subject suit. However, this Court having taken the liberty of perusing the Case Tracking System (CTS) in respect of Milimani HCCC No. 201 of 2018, noted that the transferred suit was founded on the tort of defamation, which falls within the jurisdiction of the subordinate court. The Applicant, beyond speculating on likely quantum of damages has not demonstrated the basis of his assertions that the same would exceed the pecuniary jurisdiction of the subordinate court.
10. As rightly deposed, the High Court’s original jurisdiction to entertain civil matters is found in Article 165(3)(a) of the Constitution as read with Section 5 of the High Court (Organization and Administration) Act. The pecuniary jurisdiction of the Magistrates Courts in civil matters is prescribed in Section 7 of the Magistrate’s Court Act which states that: -
- (1) A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—
    - (a) twenty million shillings, where the court is presided over by a chief magistrate;
    - (b) fifteen million shillings, where the court is presided over by a senior principal magistrate;
    - (c) ten million shillings, where the court is presided over by a principal magistrate;



- (d) seven million shillings, where the court is presided over by a senior resident magistrate;  
or
- (e) five million shillings, where the court is presided over by a resident magistrate.”

11. In addition, Section 11 of the CPA provides that:

“Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same county competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts: Provided that— (i) if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court; and (ii) nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same county.”

12. Prior to transfer, the court considered the claim as presented then (Milimani HCCC No. 201 of 2018) and was persuaded that it was a matter falling within the pecuniary jurisdiction of the Magistrates Court and or raised issues that would be for all intents and purposes, be competently tried and disposed of by the lower Court. Upon transfer of a case to a subordinate court, that court assumes all powers and authority of a trial court to deal with any outstanding motions and issues arising and to hear and determine the suit. It would be defeatist if not downright absurd, and a waste of the court’s time if the position were otherwise. For the avoidance of doubt, and notwithstanding any prior orders issued by the High Court on matters pertaining to the suit itself, the Magistrates Court is duly vested with jurisdiction to consider the pending motion to set aside the interlocutory judgment entered by this Court. Therefore, the reservations expressed by the trial court on 26.10.2023 are put to rest.
13. In the result, the court is not persuaded that the Applicant has not demonstrated sufficient reason to justify the exercise of its discretion by setting aside its decision transferring the subject suit to the subordinate Court. The entire motion must fail and is hereby dismissed with no orders as to costs. The court directs that the parties do proceed to take steps to dispose of the pending motion and in progressing the suit to determination in the subordinate court.

**DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 5<sup>TH</sup> DAY OF DECEMBER 2024.**

**C. MEOLI**

**JUDGE**

In the presence of

For the Applicant: Ms. Mumbi h/b for Mr. Omiti

For the 1<sup>st</sup> Respondent: N/A

For the 2<sup>nd</sup> Respondent: Ms. Waweru

C/A: Erick

