



**EKM v BMO (Civil Miscellaneous Application E059 of 2025)
[2025] KEHC 14062 (KLR) (6 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14062 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL MISCELLANEOUS APPLICATION E059 OF 2025**

**JM NANG'EA, J
OCTOBER 6, 2025**

BETWEEN

EKM APPLICANT

AND

BMO RESPONDENT

RULING

1. By Notice of Motion dated 19th February 2025, the Applicant seeks orders as hereunder:-
 1. Spent.
 2. That the Children Case No. E372/2024 filed at Nakuru Law Courts be transferred to Karatina Law Courts for hearing and determination.
 3. Spent.
 4. That costs be provided for against the Respondent.
2. The applicant deposes by Affidavit in support of the Application that she is the biological mother of minors subject of the matter. Her preliminary objection to territorial jurisdiction of the lower court was dismissed, prompting this Application. She initially sought to appeal but on advice of her Legal Counsel decided to bring this Application instead. The Applicants further avers that she and the subject children reside at Karatina within the jurisdiction of Karatina Law Courts. She faults the Respondent, the children's father, for choosing to file the suit at Nakuru where he resides and carries on business to suit his own convenience. Owing to her work as a Police Officer, the Applicant laments that she has difficulty getting to Nakuru for the court proceedings. The minors are said to be school going and are able to easily access Karatina.
3. For the stated reasons inter alia, the Applicant craves reliefs as per the Application.



4. The Respondent opposes the Application through his affidavit evidence in reply. He avers that he is married to the Applicant, and they have established their matrimonial home in Nakuru County. He adds that the Applicant resides in Police Quarters at Karatina, and by the nature of her work, she could transfer to other work stations at any time.
5. The Respondent continues to depose that hearing the case in Nakuru does not inconvenience the children since they do visit him in Nakuru during school holidays and only reside with the Applicant at Karatina when their school is open. Besides, the Respondent contends that the children's access to Nakuru Law Courts would not be adversely affected since court proceedings are also conducted virtually thus enabling access from any part of the world.
6. The Respondent charges that the Applicant has abused her power as a Police Officer to forcefully take away the children from his custody during the December holiday. She is also allegedly colluding with "children agencies" in Karatina to frustrate and deny him access to the children.
7. The Respondent further contends that contrary to the Applicant's claim, her Appeal No. E020 of 2024 to this court against dismissal of her preliminary objection is still active. According to the Respondent, the same issue of transfer of the matter to Karatina was the one that was determined in the Magistrate's Court by dismissal of the Applicant's preliminary point.
8. The Respondent therefore asserts that there is no sufficient cause for transfer of the suit before the lower court to Karatina Law Courts.
9. The parties did not file Submissions. I have perused the rival affidavits against the Application. The Application is expressed to be brought pursuant to Sections 11 – 20 of the *Civil Procedure Act*, and all enabling provisions of the Law. Section 11 of the Act provides for filing of a suit in the court of the lowest grade competent to try it. Section 15 also provides for institution of suits in a court within the local limits of whose jurisdiction the defendant resides or carries on business or personally works for gain; or where the cause of action wholly or in part arises.
10. Section 18 of the same Act allows this court at any stage to transfer proceedings from a Subordinate Court; withdraw a suit or proceedings from a subordinate court and try the suit itself, among other powers stated thereunder.
11. In Nairobi High Court (Commercial and Admiralty Division) Case No. 397 of 2012 (Justus Munyinyi Macharia T/A Gusii & Proprietary Club vs Dakiang'a Distributors Limited), these factors inter alia were stated as influencing the court's decision to order transfer of a suit from one court to another;
 - a. The motive and character of the proceedings in question.
 - b. The nature of reliefs or remedies sought in the suit.
 - c. The interests of the litigants and more convenient administration of justice. and
 - d. Expenses the parties are likely to incur in transportation and maintenance of witnesses.
12. The main issue to determine is whether there is sufficient cause for transfer of the suit from Nakuru to Karatina.
13. The power to transfer a case is invoked for administrative convenience. The court is to exercise its discretion in a judicious manner and depending on the circumstances of each case before it.
14. The lower court's Ruling that it is properly seized of the matter prevails, any appeal not having been determined. The Applicant has not responded to the claim that the appeal is pending among others



raised in the Respondent's affidavit, as by means of a further or supplementary affidavit. There is therefore no ground on which to discredit the Respondent's averments.

15. This matter can conveniently be handled in Nakuru. It is undisputed that the subject minors regularly visit the Respondent in Nakuru. They and their mother can also take part in the case from Karatina virtually.
16. There is no evidence that the Applicant's Appeal has been withdrawn. The Ruling of the lower court on the Preliminary Objection has not also been provided to this court. It was important to exhibit the Ruling so that the court could establish whether the same issues raised herein arose and were determined before the lower court as claimed by the Respondent. Notwithstanding, I find no sufficient cause warranting transfer of the case as sought owing to the court's observations as above. Such an order has the potential to delay conclusion of the matter in which the welfare of children is involved thereby infringing Article 53 (2) of *the Constitution* which embodies the welfare principle in children matters.
17. The Application is accordingly dismissed. As this is a family matter, no order is made as to the costs of the Application.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 6TH DAY OF OCTOBER, 2025 IN THE PRESENCE OF:

Applicant's Advocate, Ms Wahome

Respondent, Absent

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

