



**EK v RKM (Miscellaneous Application E066 of 2025)
[2025] KEHC 13705 (KLR) (Family) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13705 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E066 OF 2025
H NAMISI, J
OCTOBER 3, 2025**

BETWEEN

EK APPLICANT

AND

RKM RESPONDENT

RULING

1. The Applicant has filed Notice of Motion dated 12 March 2025 seeking the following orders:
 - i. (spent)
 - ii. (Spent)
 - iii. That an order do issue transferring MCDC/E003/2025 from Moiben Magistrate Court to Milimani Magistrates Court;
 - iv. That this Court do grant any other order that it deems fit and helpful towards meeting the ends of justice;
 - v. That cost of this Application be provided for.
2. The Application is brought under sections 1A, 1B, 3A and 15 of the *Civil Procedure Act*, Cap 21 and section 5 of the High Court (Organisation and Administration) Act. The Application is supported by an affidavit sworn by the Applicant and premised on the grounds on the face of it.
3. In her Affidavit, the Applicant avers that the Respondent filed a Divorce Cause at Moiben Magistrates Court, yet the Applicant currently resides in Westlands, Nairobi. It is the Applicant’s contention that the parties have resided in Nairobi since 1995 and not in Chepkorio, Elgeyo Marakwet as alleged in the Petition. She avers that the Moiben Magistrate Court, which is situated in Uasin Ngishu County



is extremely far from her residence and does not have geographical jurisdiction due to her current residence. The Applicant argues that attending court in Moiben will be extremely inconvenient, since it is her desire to defend the suit vigorously.

4. In his Replying Affidavit, the Respondent avers that while he may have cohabited with the Applicant at Westlands, he relocated to Uasin Ngishu county in 2008. The Respondent averred that he is aware that the Applicant has constructed a home in Chepkorio, Elgeyo Marakwet County, where she resides with a third party. The Respondent noted that since the court in Moiben supports virtual proceedings, the Applicant will not have to incur travel costs.
5. In her Supplementary Affidavit, the Applicant clarified that the home in Chepkorio actually belongs to her parents. She directed the Court to the provisions of section 15 of the [Civil Procedure Act](#).
6. Parties relied on their Affidavits and did not file submissions.

Analysis and Determination

7. Section 15 of the [Civil Procedure Act](#) provides as follows:

Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

- a. the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
 - b. any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
 - c. the cause of action, wholly or in part, arises.
8. The law relating to transfer of suits is contained in Section 18 of the Act. Section 18(1)(b)(ii) which gives the Court discretionary powers 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. ...
 - 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
9. While exercising its discretion set out in Section 18 of the [Civil Procedure Act](#), the Court is mindful of the balance of convenience, questions of expense, interests of justice and possibilities of undue hardship



that may be occasioned to the parties. These principles were set out in the case of *Kageny v. Musiramo & Another* [1968] E. A. 43 as follows:

“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 a strong case to the satisfaction of the Court that the application ought to be granted. There are also authorities stating that the principle matters to be taken into consideration are balance of convenience, questions of expense, interests of justice and possibilities of undue hardship; and if the Court is left in doubt as to whether under all circumstances it is proper to order a transfer, the application must be refused.”

10. Mulla in the Code of Civil Procedure (2012) 18th ed. at p. 391 while expounding on Sections 20(a) and (b) of the Indian Civil Procedure, the equivalent of Section 15 of our *Civil Procedure Act*, observes:

“The principle underlying s 20(a) and s (20)(b) is that the suit is to be instituted at the place where the defendant can defend the suit without undue trouble.”

11. Reading section 15(b) clearly stipulates that a suit ought to be filed at the place where the Defendant ordinarily resides or carries on business. In this instance, the Applicant resides and works for gain in Nairobi. It, therefore, follows that the suit ought to be have been filed in Nairobi. For that reason, I allow the Application and make the following orders:

- i. That MCDC/E003/2025 RKM -vs- EK is hereby transferred from Moiben Magistrate Court to Milimani Commercial Court for hearing and determination;
- ii. Costs to be in the cause.

DATED AND DELIVERED AT NAIROBI THIS 3 DAY OF OCTOBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

For Applicant: Ms. Mosembi h/b Mr Gesicho

For Respondent: N/A

Court Assistant: Lucy Mwangi

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