

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. E077 OF 2025

**KENYA UNION OF SAVINGS AND
CREDIT LTD.....PLAINTIFF**
CO-OPERATIVE
**=VERSUS=
JULIUS ODERA.....
.....DEFENDANT**

RULING

1. This ruling is on the Plaintiff's motion dated 28th May 2025. By which the Plaintiff apparently acknowledging that this Court lacks jurisdiction to entertain this suit, is urging that the suit be transferred from this Court, to the Co-operatives Tribunal.
2. From the pleadings, this is a suit that the Defendant (KENYA UNION OF SAVINGS AND CREDIT CO-OPERATIVE - KUSCO) has filed against JULIUS ODERA who has been its employee. Seeking to recover from him, money he allegedly misappropriated when he was in office.
3. The Defendant in his defence stated that this suit should have been filed in the Co-operatives Tribunal; and that this Court lacks jurisdiction to entertain it. Following that response, the Plaintiff now filed this Application- seeking the transfer of the suit to the said Tribunal.

4. The Application was canvassed by way of written submissions. The Defendant has his response and submissions opposed the Application.

Determination

5. I hold that a suit filed in a court that lacks jurisdiction, is not transferrable. The transfer power that the High Court has under Section 18 of the Civil Procedure Act (Cap 21 Laws of Kenya) can be exercised only where the suit was filed in a Court having jurisdiction. Not on suits filed in courts that have no jurisdiction.

6. Some litigants in trying to be too clever for courts or in trying to pull a rug under their adversaries' feet, or in an escape endeavor to escape from jurisdictional preliminary objections once raised, by seeking for transfer of the very suits to the courts having jurisdiction.

7. Courts should see through such clever schemes and in pursuit of equity reject such schemes as anything and any act done by a party, to circumvent or defeat the law, is an abuse of the court process. This Application is one such.

8. For the foregoing reasons, this Application fails and is hereby dismissed. The suit itself is also dismissed for want of jurisdiction.

9. As for costs, given that the Plaintiff SACCO was by this suit supposedly pursuing funds that it allegedly lost. Each party shall bear its own costs of the Application as well as those of the suit itself.

DATED and DELIVERED at NAIROBI on this 9th day of October 2025.

**PROF (DR) NIXON SIFUNA
JUDGE**