

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISC CIVIL APPLICATION NO E234 OF 2025

FREDRICK OMONDI OCHIENG.....
APPLICANT

VERSUS

JAMES NDERITU
MWANGI.....RESPONDENT

Coram: Before Justice R. Nyakundi
M/s Kiplagat J. Misoi & Co Advocates
M/s Monda & Co Advocates

RULING

1. What is pending before this Honourable Court for determination is a Notice of Motion Application dated 25th August 2025 brought pursuant to sections 3A and section 18 and 63 (e) of the Civil Procedure Rules and the Judicature Act where the Applicant is seeking the following orders: -
 - a. Spent
 - b. That this Honourable Court be pleased to order for transfer ELDORET CMCC NO. E1090 of 2021 from Eldoret Chief Magistrate Court to Kapsabet Chief Magistrate Court for hearing and disposal.
 - c. That cost be on cause.
2. The Application is made on the following grounds on the face of it among others: -
 - a. That the Lower Court suit was erroneously filed in Eldoret Chief Magistrate's Court.
 - b. That the cause of action occurred along Kapsabet - Eldoret Highway at Mutwot Centre, which is within the jurisdiction of Kapsabet Chief Magistrate's Court.
 - c. That the transfer is essential to serve the interest of justice on the part of the Applicant.

- d. That the trial Magistrate in Eldoret gave directions on 6/5/2025 that this suit be transferred to Kapsabet Chief Magistrate Court for trial.
 - e. That no prejudice will be occurred to the Respondent should this matter be transferred as prayed.
3. This application is unopposed as there is no replying Affidavit filed on the record and in the Case Tracking System (CTS).

Resolution

4. I have read and considered the Notice of Motion Application and there is one sole issue for determination by this Honourable Court: -

Whether the Application for transfer is merited?

5. The power of the High Court to transfer and withdraw cases instituted in the Subordinate Courts is provided for in section 18(1) of the Civil Procedure Act which provides as follows: -

18. Power of High Court to withdraw and transfer case instituted in subordinate court

(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.

6. Under Section 18(1) of the Civil Procedure Act, this Court may exercise its supervisory jurisdiction to withdraw or transfer suits for trial and final disposal by itself or other courts subordinate to it. This law also gives the court the general power to transfer suits, which power may be exercised at any stage of the proceedings. A court may do so either on application by a party or suo moto.
7. It is a well-established principle of law that, when the transfer is at the instance of a party then the burden lies on the applicant to make out a strong case for the transfer. In **Equity Bank Limited Vs Bruce Mutie Mutuku t/a Diani Tour Travel (2016) eKLR**, the Court of Appeal held as follows: -

“In numerous decided cases, courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under Section 18 of the Civil Procedure Act to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow a court to transfer an incompetent suit for want of jurisdiction to a competent Court would be to muddle up the waters and allow confusion to reign. It is settled that parties cannot, even by their consent confer jurisdiction on a court where no such jurisdiction exists. It is so fundamental that where the Court lacks jurisdiction parties cannot even seek refuge under the O2 principle or the overriding objective under the Civil Procedure Act, the Appellate Jurisdiction Act or even Article 159 of the Constitution to remedy the same...”

8. Some of the matters to be taken into consideration are the 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. Additionally, the power under Section 18 of the Civil Procedure

Act refers to competent suits filed in courts seized with the requisite jurisdiction to entertain them. The general power of the court to transfer suits under section 18 of the Civil Procedure Act cannot therefore be exercised in a matter where the suit was filed in a court without jurisdiction.

9. The Supreme Court case of **Albert Chaurembo Mumba and 7 Others Vs Maurice Munyao & 148 Others (2019) eKLR** held that: -

*“However, as it was well elucidated in the case of **Kagenyi vs Musiramo & Another (1968) EALR 43**, an order for transfer of a suit from one court to another cannot be made unless the suit has been brought, in the first instance, to a court which has jurisdiction to try it. It’s therefore irrelevant as parties cannot consent to confer jurisdiction to a Court or tribunal where it is not provided by law.”*

10. On the material before this Honourable Court the following facts are uncontroverted or plainly established:

- a. The cause of action is said to have arisen along the Kapsabet-Eldoret Highway at Mutwot Centre, a place falling within the territorial jurisdiction of Kapsabet Chief Magistrate’s Court.
- b. The suit is currently registered as Eldoret CMCC No. E1090 of 2021 in the Eldoret Chief Magistrate’s Court.
- c. The Applicant contends that filing in Eldoret was erroneous and that transfer will promote convenience, particularly of witnesses and evidence.
- d. The trial magistrate in Eldoret gave directions on 6/5/2025 that the matter be transferred to Kapsabet for trial. That judicial direction is a material and persuasive circumstance which this Court cannot disregard lightly.

11. I take cognizance that the Applicant’s invocation of sections 3A and 63(e) of the Civil Procedure Act for the overriding objectives and

supervisory mandate is consistent with the object of delivering justice in the proper forum. The locus of the cause of action is a primary consideration. In this instant case, the cause of action arose at Mutwot Centre within Kapsabet's territorial ambit. The trial magistrate's prior direction recommending transfer is a strong factor favoring transfer because the trial court has had first-hand exposure to the record and the conduct of pre-trial steps and a judicial view in favour of transfer supports the conclusion that local convenience and interests of justice would be served.

12. Having said so and taking into context the legal provisions discussed herein under, the following orders shall abide: -

a. That the Notice of Motion dated 25th August 2025 is hereby allowed.

b. That the Eldoret Chief Magistrate's Court Civil Case No. E1090 of 2021 be and is hereby transferred to the Kapsabet Chief Magistrate's Court for hearing and final disposal.

c. That the Deputy Registrar of this Court shall take all necessary steps to facilitate the transfer and shall forward the record, pleadings and all relevant files to the Kapsabet Chief Magistrate's Court with immediate effect.

d. That the Costs of this application shall be in the cause.

e. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 15TH OCTOBER
2025**

.....
R. NYAKUNDI

JUDGE