



**Ruhu v Star Newspaper & 2 others (Miscellaneous Civil Application E147 of 2025) [2025] KEHC 14125 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14125 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CIVIL APPLICATION E147 OF 2025**

**G MUTAI, J**

**OCTOBER 2, 2025**

**BETWEEN**

**HON ISRAEL G RUHU ..... APPLICANT**

**AND**

**THE STAR NEWSPAPER ..... 1<sup>ST</sup> RESPONDENT**

**THE EDITOR, THE STAR NEWSPAPER ..... 2<sup>ND</sup> RESPONDENT**

**JOHA KHISA NALIANYA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Hon Israel G Ruhu, whom I shall hereafter refer to as “the applicant” or Hon Ruhu”, is a judicial officer currently serving with the Judiciary of Kenya at the Mpeketoni Law Courts. He filed a complaint against the respondents with the Media Commission following the publication of an article in the 26<sup>th</sup> January 2020 edition of The Star newspaper. The Star is a publication of Radio Africa Limited and is widely circulated within the Republic of Kenya. The article was entitled “Magistrate entangled in feud between donors and Kimilili residents over school”. The applicant averred that the article written by the 3<sup>rd</sup> respondent in the said publication was defamatory of him.
2. The Complaint was lodged with the Media Commission on 12<sup>th</sup> May 2020. Hon Ruhu sought to have the Respondents ordered to apologize for publishing the offending article and for the impugned article to be pulled down.
3. The matter wasn’t heard until 2024. The applicant contends that the matter could not proceed before then, as the Media Commission lacked Commissioners.
4. The applicant now seeks to have the matter transferred to the Chief Magistrate’s Court, Mombasa. His reasons for seeking the transfer of the matter are that the Media Commission’s jurisdiction is limited to ordering a party to apologize and for the article to be pulled down, but that damages may only be



ordered by the Chief Magistrate Court or the High Court, depending on the pecuniary jurisdiction. In his view, having the matter adjudicated by the Media Commission and the Chief Magistrate's Court would not be a prudent use of scarce judicial resources, as he would thereafter have to file another matter before the Court for damages.

5. The application before the Court is dated 5<sup>th</sup> May 2025. The applicant seeks following order:-

“Complaint No 1 of 2024; Hon Israel G Ruhu versus The Star Newspaper, Editor, The Star Newspaper and John Khisa Nalianya, be withdrawn from the Media Complaints Commission and be transferred to the Magistrate Court at Mombasa for hearing and disposal.”
6. The applicant also sought to have the costs of the application provided for.
7. The application is supported by the annexed affidavit of the applicant, sworn on 5<sup>th</sup> May 2025, as well as the grounds stated therein. Since the affidavit elaborates on the Summary I provided above, I will not reproduce it here.
8. The respondents, through their counsel Ms Mercy Gichoya, filed grounds of opposition dated 13<sup>th</sup> May 2025 vide which they opposed the application on the grounds that it was misconceived, bad in law, and procedurally defective, legally untenable, incapable of being granted, intended to defeat the provisions of the *Limitation of Actions Act*, and an abuse of the Court process.
9. While the matter was pending determination, the applicant filed the notice of motion dated 25<sup>th</sup> August 2025 seeking to have this Court stay proceedings before the Media Commission slated for 26<sup>th</sup> August 2025. This Court issued temporary orders. The said application was allowed by consent on 16<sup>th</sup> September 2025.
10. The main application was canvassed by way of written submissions pursuant to the directions of this Court. Both parties complied with the said directions.
11. In the submissions for the applicant, Mr Mugambi, learned counsel for the applicant, submitted that the application was premised on Article 159 (2 (d) of *the Constitution* and sections 1A, 18(1) (b), and 63(e) of the *Civil Procedure Act*. The said provisions, it was submitted, empower this Court to administer justice without regard to procedural technicalities and to facilitate just and expeditious resolution of civil disputes. It was submitted that under section 18(1) (b) of the *Civil Procedure Act*, the Court could transfer a matter pending before one subordinate Court to another subordinate. On the other hand, section 63(e) of the *Civil Procedure Act* provides that the Court may issue any order(s) to prevent the ends of justice from being defeated.
12. Counsel relied on the case of Kenya Power & Lighting Company Limited v Benzene Holdings Limited t/a Wyco Paints [2016] KECA 73 (KLR), Julius Lekuruito & another v Nottingham Mwangi & another [2018] KEHC 662 (KLR), and Waweru v Prime Auto Solutions Limited [2024] KEHC 1971 (KLR).
13. It was contended that the complaint before the Media Commission was lodged on time as it was filed through a letter dated 20<sup>th</sup> May 2020, which the Respondents responded to on 28<sup>th</sup> May 2020.
14. Mr Mugambi, therefore, submitted that I allow the application.
15. The submissions of the respondents are dated 10<sup>th</sup> July 2025. Counsel contended that although the matter was lodged on 13<sup>th</sup> May 2025 and they responded to it on 28<sup>th</sup> May 2020, the matter remained



- dormant for a long time, and it was only on 23<sup>rd</sup> April 2024 that the applicant was notified of it. The Respondent filed a statement of Response to the complaint on 12<sup>th</sup> November 2024.
16. Counsel for the respondents submitted that the matter was first referred to a mediator. During mediation, the applicant, for the first time, evinced a desire to seek damages. Ms Gichoya, learned counsel for the respondents, contended that the Media Commission informed the applicant that damages aren't awarded by the Commission. She submitted that damages were not sought in the complaint dated 12<sup>th</sup> May 2020 and that he could not legally seek them at this point, as that would offend the *Limitation of Actions Act*.
  17. Counsel identified issues coming up for determination as being whether the Honourable Court has jurisdiction to grant the orders sought and whether the applicant was trying to circumvent the *Limitation of Actions Act*.
  18. Regarding jurisdiction, it was averred that the High Court's jurisdiction to transfer suits was in respect of subordinate Courts, which under section 3 of the *Interpretation and General Provisions Act* are the Magistrate's Court only. In her view, the Media Commission wasn't a subordinate Court. Reliance was placed on the decision of High Court in *Humphrey Oure V Afya Co-op Savings & Credit Society Ltd* [2006] KEHC 2741 (KLR).
  19. Reliance was also placed on the holding of the Court in *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel* [2016] KECA 250 (KLR).
  20. It was urged that defamation suits may only be lodged within 1 year of the occurrence of the tortious action. Counsel submitted that the applicant filed the complaint before a body that was not authorized to hear cases arising out of defamation and could not award damages. It was argued that, upon realizing his error, the applicant attempted to amend the claim and thereby defeat the statute of limitations. Counsel stated that once the statutory period lapsed, the claim ceased to be justiciable, no matter how meritorious.
  21. Counsel also relied on the case of *Abraham Mwangi Wamigwi V Simon Mbiriri Wanjiku & Another* [2012] KEHC 5479 (KLR) and *Macfoy v United Africa Co Ltd* [1961] 3All ER 1169.
  22. Ms Gichoya, in conclusion, submitted that the application be dismissed with costs to the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents.
  23. I have considered the application before me, the response thereto, and the submissions of the parties. In my view, the issues for determination are the following: -
    1. Does the High Court have the power to transfer the complaint to the subordinate court?
    2. Is the application intended to defeat the Limitation of Action Act?
  24. I will look at the provisions of the law regarding the transfer of suits and seek to determine if the power of the High Court to transfer suits is circumscribed.
  25. Section 18 of the *Civil Procedure Act* 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.”

26. My understanding of the above provision is that the High Court may transfer a suit pending before one subordinate Court to another subordinate Court and may do so on its own motion, even without hearing the parties.

27. The question then arising from the submissions of the counsel for the respondents is whether the Media Commission is a subordinate Court for purposes of said section. Counsel submitted, in purported reliance on the decision of Warsame, J, that it isn't. Is that the case? I have used the word “purported” advisedly because I entertain a doubt as to whether the Judge was making a finding, or merely quoting the submissions of a party. The relevant passage in the said decision is reproduced below:-

“It is the contention of the applicant that the cause of action arose in Kisumu and the subject matter is based in Kisumu. It is also contended that the defendant is based in Kisumu. Mr. Onsongo Advocate relied on Section 17 and 18 of the Civil Procedure Act. I must state from outset that Section 17 and 18 of the Civil Procedure Act has no relevance to the present application. The High Court has powers to transfer or direct the transfer of a particular matter before a subordinate Court. In my humble view the definition of a suit, which means all Civil Proceedings commenced in any manner prescribed, cannot apply to matters before a tribunal, because the High Court can only transfer a suit pending before a subordinate Court to another Court after considering the objections by the parties.”

28. In my view, the Media Commission is a subordinate Court. Article 169 of the Constitution defines a subordinate Court as follows: -

- “(1) The subordinate courts are: -
- (a) the Magistrates courts;
  - (b) the Kadhis' courts;
  - (c) the Courts Martial; and



- (d) any other court or local tribunal as may be established by an Act of Parliament, other than the courts established as required by Article 162(2)”

29. The Black’s Law Dictionary (11<sup>th</sup> Edition) defines tribunal as “a Court or other adjudicatory body”. In my view, the Media Commission is a tribunal, as it is established by statute and has been granted jurisdiction to hear and determine disputes. I will reproduce below the relevant provisions of the [Media Council Act](#).

“Functions of the Complaints Commission

The functions of the Complaints Commission are to:-

- (a) mediate or adjudicate in disputes between the government and the media and between the public and the media and intra media on ethical issues;
- (b) ensure the adherence to high standards of journalism as provided for in the code of conduct for the practice of journalism in Kenya; and
- (c) achieve impartial, speedy and cost effective settlement of complaints against journalists and media enterprises, without fear or favour in relation to this Act.

32. Powers of the Commission in discharge of functions

The Commission shall have all the powers incidental to and necessary for the effective discharge of its functions under this Act and any other written law and shall:-

- (a) establish and maintain an internal mechanism for the resolution of disputes;
- (b) prescribe procedures for determination of disputes relating to the media;
- (c) receive, investigate and deal with complaints made against journalists and media enterprises;
- (d) summon and receive information of evidence relating to any matter.

33. Powers of the Complaints Commission

- (1) The Complaints Commission may, by notice in writing, require any person to:-
  - (a) give to the Complaints Commission reasonable assistance in the investigation of a complaint made under this Act; and
  - (b) appear before the Complaints Commission for examination concerning matters relevant to the investigation of any complaint made under this Act.



- (2) The Commission shall not be bound by the rules of evidence as set out in the *Evidence Act* (Cap. 80).
  - (3) Except as expressly provided for in this Act or any regulations made pursuant to this Act, the Complaints Commission shall regulate its own procedure.”
30. It is therefore self-evident that the said quasi-judicial body, created by the *Media Council Act*, is a subordinate Court within the permissive ethos of the current Constitutional dispensation.
  31. In my view, the decision of Warsame, J, in *Humphrey Oure V Afya Co-op Savings & Credit Society Ltd* [2006] KEHC 2741 (KLR) is distinguishable on two grounds. Firstly, it was delivered in 2006, before the current Constitution was promulgated, and reflected the law as it existed at that time. Secondly, the learned Judge was not satisfied that it was necessary to micromanage the affairs of the Cooperative Tribunal, which, as far as I can tell, hears disputes in circuits as panels of the same Court.
  32. What of the fact that no pleadings were filed? In a similar vein, the new Constitution permits a grievant to approach the Court with the minimum of procedural technicalities. I am cognizant of the fact that the right to a fair trial requires that the respondent must understand the case it is facing. That said, *the Constitution* is quite clear that justice must be administered without undue regard to procedural technicalities. What I have seen in the objection of the respondent to the transfer is a tortured reading of the law that demands that procedural technicalities be seen not as the handmaidens of justice, but as her mistresses.
  33. Having established that the Media Commission is a subordinate Court, it therefore follows that this Court has jurisdiction under section 18 to transfer the matter.
  34. The respondents have averred that the transfer is sought to defeat the provisions of the *Limitation of Actions Act*. Is the case?
  35. I note that the Complaint and the responses thereto were lodged in 2020. The applicant avers that he was unable to prosecute the complaint due to the lack of Commissioners. This particular assertion has not been rebutted. The respondent did not file a replying affidavit through which they could controvert the said assertion. Since the matter was lodged within the requisite period, I am unable to agree that the transfer would defeat the provisions of the *Limitation of Actions Act*.
  36. My understanding of section 18 of the *Civil Procedure Act* is that a transfer of a matter is an exercise of discretion which the Court must do on sound principles, but not whimsically or capriciously.
  37. In the Ugandan case of *David Kabungu v Zikarengu & 4 Others*, Kampala HCCS No. 36 of 1995, it was held that:-

“What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction... it is 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 out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are, 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... Want of jurisdiction of the



court from which the transfer is sought is no ground for ordering transfer because where the court from which transfer is sought has no jurisdiction to try the case, transfer would be refused...”

38. The Media Complaints Commission had the jurisdiction to hear and determine the matter. In light of that, this Court has the jurisdiction to transfer the matter. I am satisfied that it would be more convenient and cost-effective for all parties concerned for the matter to be heard in the Chief Magistrate’s Court in Mombasa.
39. It is therefore my view that the application has merit. The same is allowed with costs.
40. It is so ordered.

**DATED AND SIGNED AT MOMBASA, THIS 2<sup>ND</sup> DAY OF OCTOBER 2025. RULING POSTED IN THE CTS PLATFORM.**

**GREGORY MUTAI**

**JUDGE**

