



REPUBLIC OF KENYA



**Weru v Gachuhi & another (Miscellaneous Application E176 of 2025)
[2025] KEHC 13806 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13806 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION E176 OF 2025
HI ONG'UDI, J
OCTOBER 2, 2025**

BETWEEN

JAMES MAINA WERU APPLICANT

AND

ROSEMARY WANJIRU GACHUHI 1ST RESPONDENT

UTOPIA GOODS LIMITED 2ND RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion dated 19th May 2025 where the applicant seeks the following orders;
 - i. -iii- Spent.
 - iv. That this honourable court be pleased to issue an order for transfer of file number Nakuru CMCC No. E185 of 2025 to Thika law courts.
 - v. That the costs of this application be in the cause.
2. The application is premised on the grounds on its face plus the supporting affidavit of the applicant sworn on 19th May 2025. The main prayer is transfer of file number Nakuru CMCC No. E185 of 2025 to Thika law courts. where the cause of action arose. The reason is that unless the suit is transferred it would suffer a great risk of being dismissed on technical grounds of jurisdiction.
3. The application is opposed vide the 1st respondent's replying affidavit dated 3rd June 2025. She averred that the application is a non-starter, incompetent, fatally defective and an abuse of the court process since this court has no jurisdiction to transfer a matter from a court of no jurisdiction to a court of competent jurisdiction. She added that the applicant has the option to withdraw the suit before the magistrate court and file it in the proper forum.



4. The application was canvassed by way of written submissions.

Applicant's submissions

5. These were filed by Jackson Wafula Advocates and are dated 30th June, 2025. Counsel gave a brief background of the application and identified one issue for determination which is whether the application is merited.
6. He submitted that the main reason for the transfer is to absolve the applicant the great costs that would be incurred from the withdrawal and refiling of the suit at Thika law courts, considering that the filing fee already spent is kshs 71,000/=. He placed reliance on the decision in *Francis Kibugi Wanjohi v Kenya Railway Corporation* [2021] eKLR where the court held as follows;

“In view of the above, it is my finding that adopting the proposal by the respondent would go against the above provisions. The applicant would be forced to file new pleadings that would force him to pay court fees again. He would then incur costs of serving the respondent again. It could get worse if the claim is now time-barred the claimant's case will have been dismissed without him having his day in court even though he had approached the court timeously. This, in my view, goes against the above provisions and the emerging Jurisprudence that cases ought to be heard and determined on the merits. The upshot is that the instant application succeeds.”
7. See also; *Hougzhou Agrochemicals Industries Ltd v Panda Flowers Ltd* [2012] eKLR.
8. Counsel further submitted that there will be great hardship and great inconvenience to the parties if this suit remains within Nakuru Law courts. He argued that this is court bestowed with the power to order transfer of any suit whenever reasonable grounds are raised. Further, that the applicant was not forum shopping and that this application is only meant to meet the ends of justice and convenience on the part of the respondent who is based in Thika, and no prejudice would be caused on the part of the respondent. He urged the court to allow the application

Respondent's submissions

9. These were filed by Kabuthi Kamau Advocates and are dated 10th September, 2025. Counsel identified three issues for determination.
10. The first issue is whether Nakuru CMCC No. E185 of 2025 is a nullity for want of territorial jurisdiction. Counsel submitted that that the cause of action arose in Thika as per the applicant's supporting affidavit. Thus, the Magistrate's Court lacked territorial jurisdiction by virtue of Section 15 of the *Civil Procedure Act*, Cap 21. She stated that jurisprudence on jurisdiction is settled and unequivocal. She placed reliance on the decision in *Owner of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1, where the Court of Appeal, per Nyarangi, JA, held as follows:

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”
11. On the second issue on whether this court can transfer a suit that is a nullity, counsel submitted that the applicant's entire application was based on a fundamental legal fallacy that a suit which is void for lack of jurisdiction could be “transferred” to cure its defect. However, that the said position was directly



contradicted in *Equity Bank Ltd v Bruce Mutie Mutuku T/A Diani Tour & Travel* [2016] eKLR, the Court of Appeal was explicit:

“..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.”

12. See also *Protus Ngeyo Kirui v Kecha Sammy Matonyi t/a Kiboch Ventures* [2023] KEHC 20720 (KLR) and *Ali Jarso Wako & Another v Ministry of Interior & Coordination of National Government & 5 Others* [2020] eKLR.

13. Lastly, on whether the applicant has met the high threshold for a transfer under section 18 of the *Civil Procedure Act*, counsel submitted in the negative and cited the decision in *Equity Bank Ltd v Bruce Mutie Mutuku T/A Diani Tour & Travel* (*supra*) where the Court of Appeal held as follows;

“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 it lacks, parties cannot even seek refuge under the “O2” principle or the overriding objective...”

14. She concluded by urging the court to dismiss the applicant’s application with costs.

Analysis and determination

15. I have considered the application, affidavits and the submissions by the parties, and find the issue arising for determination to be whether the applicant’s application is merited.

16. This court’s authority to exercise the powers sought is conferred by Section 18 (1) of the *Civil Procedure Act* which provides as follows:

“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 sub-ordinate to it and competent to try or dispose the same:
- b. withdraw any suit or other proceeding pending in any court sub-ordinate to it, and thereafter:
 - i. try or dispose of the same; or
 - ii. transfer the same for trial or disposal to any court sub-ordinate to it and competent to try or dispose of the same;
 - iii. transfer the same for trial or disposal to the court from which it was withdrawn

17. In the Case of; *David Kabungu v Zikarenga & 4 others* Kampala HCCS number 36/1995, the court had this to say; “Section 18 (1) of the *Civil Procedure Act* gives the court the general power to transfer suits and this power may be exercised at any stage of the proceeding even suo moto by the court without application by any party. The burden lies on the applicant to make out a strong case for the transfer.



A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice or the suit has been filed in particular for the purposes of working injustice...”

18. It is trite law that the overriding objective of the Civil Procedure Act and the rules made thereof is to facilitate the just, expeditious, proportionate and affordable resolution of Civil disputes by the governed by the Act. In the case of Stephen Gatbua Kimani v Nancy Wanjira Waruingi T/A Providence Auctioneers [2016] eKLR it was stated as follows in respect of the overriding objective of the rules:

“The double O’s in the phrase Overriding Objectives are what coined what is today famously known as the term Oxygen Principle. In Hunker Trading Company Limited v Elf Oil Kenya Limited [2010] eKLR perhaps the first case to be grounded on the new provisions the Appellate Jurisdiction Act (Sections 3A and 3B), it was held that section 1A of the Civil Procedure Act came in to provide facilitation of just, expeditious and proportionate resolution of civil disputes in Kenya as the overriding objective of the Act.”

19. It is not in dispute that, the suit in question was instituted by the applicant himself. He is however claiming that the cause of action arose in Thika and unless the suit is transferred it would suffer a great risk of being dismissed on technical grounds of jurisdiction. This position is not disputed by the respondent who also argued that the Nakuru Magistrate’s Court lacks territorial jurisdiction by virtue of Section 15 of the Civil Procedure Act, Cap 21. However, the respondent contends that this court cannot transfer a suit that is a nullity.

20. Section 18(1) of the Civil Procedure Act provides:

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.

21. From the onset I must make it clear that the applicant filed his suit before a Magistrate’s court which has jurisdiction to hear it. The only error he made was to file the suit in Nakuru CM’s court instead of Thika CM’s Court in whose jurisdiction the alleged claim arose. With such an error this court has the power under section 18(1) and (2) of the Civil Procedure Act to intervene to avoid unnecessary expenses and injustice to the parties.



22. In view of the above and in exercising its powers under sections 18(1) & (2), 1A, 3 & 3A of the *Civil Procedure Act* and Articles 50(1) & 159 of *the Constitution* of Kenya I allow the application accordingly.
23. It is thus ordered that Nakuru CMCC No. E185 of 2025 be and is hereby transferred to Chief Magistrate's Court Thika for hearing and determination. Costs shall be in the cause.
24. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 2ND DAY OF OCTOBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

