



**Fairbanks Limited & another v Alliance Leasing Limited &
another (Commercial Miscellaneous Application E609 of 2025)
[2025] KEHC 14982 (KLR) (Commercial and Tax) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14982 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E609 OF 2025**

**BK NJOROGE, J
OCTOBER 23, 2025**

BETWEEN

FAIRBANKS LIMITED 1ST APPLICANT

ZEYANA ENTERPRISES LIMITED 2ND APPLICANT

AND

ALLIANCE LEASING LIMITED 1ST RESPONDENT

TIMELESS DOLPHIN AUCTIONEERS 2ND RESPONDENT

RULING

1. This Ruling is in respect of two applications pending before the Court.
2. The first application is by way of a Notice of Motion dated 17.6.2025. It is filed by the Plaintiffs/Applicants and seeks the following orders:
 - 1) That the Honourable Court be pleased to withdraw and transfer the aforementioned case, Milimani CMCC No. E1074 of 2024, FairBanks Limited & Zeyana Enterprises Limited vs Alliance Leasing Limited and Timeless Dolphin Auctioneers, to this Court for trial and final determination.
 - 2) That costs of this application be provided for.
3. The 2nd Application is by the same Plaintiffs/Applicants. It is by way of an application under a Certificate of Urgency by way of a Notice of Motion dated 26.6.2025. it seeks the following order:
 1. Spent.



2. Spent.
 3. That this Honourable Court be pleased to cite the Defendants for contempt of Court orders that were given on 13.5.2024 and issued on 16.5.2024 and consequently their directors be committed to civil jail or be ordered to be (sic) a fine as determined by the Court.
 4. Spent.
 5. That the Honourable Court be pleased to grant temporary stay of sale of the following attached motor vehicle registration numbers and all consequential orders pending the determination of the application filed in this court dated 17th June 2025 and filed on the same day.
 - a) KDG 455 Z registered under FairBanks Limited (the 1st Applicant).
 - b) KDG 204 V registered under FairBanks Limited (the 1st Applicant).
 - c) KDK 287 K registered under Zeyana Enterprises Ltd (the 2nd Applicant).
 - d) KDK 253 K registered under Zeyana Enterprises Ltd (the 2nd Applicant).
 6. That this Honourable Court be pleased to direct and order that the Auctioneers Timeless Dolphin Auctioneers return and release all the vehicles to the Applicants and the costs be borne by the Respondents.
 7. That the O.C.S of Dandora Police Station to supervise and assist in execution of the said orders.
 8. That this Honourable Court be pleased to grant temporary stay of execution of the attachment and sale of the said motor vehicles and restrain the Respondents whether by themselves, their agents and/or servants from dealing, interfering, alienating or otherwise disposing of the Applicants/Defendants motor vehicles pending the determination of the Application filed in Nairobi HCCOMM No. E609 of 2025, FairBanks Limited and Zeyana Enterprises Ltd vs Alliance Leasing Limited & Ano.
 9. That this Honourable Court be pleased to order that status quo does maintain, status quo being the vehicles remain in possession and ownership of the Applicants pending the determination of the Application filed in Nairobi HCCOMM No. E609 of 2025, FairBanks Limited and Zeyana Enterprises Ltd vs Alliance Leasing Limited & Ano.
 10. That this Honourable Court be pleased to cite the Respondents for contempt of Court orders that were given on 13.5.2024 and issued on 16.5.2024 and consequently their directors be committed to civil jail or be ordered to be (sic) a fine as determined by this court.
 11. That this Honourable Court be pleased to declare and order that any consequential loss of use arising from the said unlawful and irregular attachment and impounding of the said motor vehicles be borne by the 1st Defendant.
 12. That the costs of the application be borne by the Defendants.
 13. That the Honourable Court be pleased to make such further or other orders as it may deem fit and expedient in the circumstances of this case.
4. That the applications are opposed by the Respondents. The Court has seen the Replying Affidavits, one sworn by Willy Kipkorir Bore on 16.7.2025. It is a response to the application dated 17.6.2025. The other Replying Affidavit of even date bears no names of the deponent, but it is said to be sworn



by the Head of Operations of the 1st Defendant. It is equally sworn on 16.7.2025 and is in response to the Notice of Motion dated 26.6.2025.

5. The Court directed that the two applications be disposed of by way of written submissions. The Court has seen and read the Applicants submissions dated 29.9.2025. The Court has not seen any submissions filed by the Respondents as at the time of writing the Ruling. The time granted for filing such submissions having long passed.

Background Facts

6. A dispute arose between the Applicants and the Respondents leading to the filing of a suit before the Lower Court. The Trial Magistrate issued some interim orders of injunction. Thereafter, the Plaintiffs are said to have sought leave and did file and Amended Plaintiff and sought additional prayers of special damages and reimbursement at a total of Kshs.20,981,132/=.
7. The effect of this amendment was that it sought a claim in excess of the Magistrates Court jurisdiction of Kshs.20,000,000/=. A Preliminary Objection was raised by the Respondents herein who sought to have the suit struck out for want of jurisdiction.
8. The Trial Court declined to strike out the suit but downed it tools to allow the Applicants move this Court for a transfer of the suit.
9. What is now before the Court is an application for withdrawing the suit from the Magistrates Court and transferring it to the High Court. The Applicant also seeks a myriad of prayers primary seeking to cite the Respondents for contempt of Court order. They seek injunctive orders, stay of execution and maintenance of status quo. They also seek the return of the vehicles that were attached.

Issues of Determination

10. Having read the applications, the responses and the submissions filed by the Applicants, the Court frames 2 issues for determination.
 - a) Whether the Court has powers to withdraw the suit from the Magistrates Court and transfer it to the High Court on the basis of the Amended Plaintiff seeking Kshs.20,981,132/=.
 - b) Whether the application by way of the Notice of Motion dated 26.6.2025 is merited.

Analysis

11. The success of the two applications before the Court depends on whether the Court has the jurisdictions to grant the orders sought.
 - a) Whether the Court has powers to withdraw the suit from the Magistrates Court and transfer it to the High Court on the basis of the Amended Plaintiff seeking Kshs.20,981,132/=.
12. The power to the High Court to withdraw and transfer cases is not in doubt. Section 18 of the Civil Procedure 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.

(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.

13. To this Court, the Magistrates Court had the jurisdiction to hear and try the case. This was up to and until the Plaintiffs filed their Amended Plaintiff dated 26.6.2025 seeking a sum of Kshs.20,981,132/=. The effect was to divest the Magistrates Court of the jurisdiction to hear the case claiming an amount in excess of its jurisdiction. The pecuniary limit of that Court being 20 million.
14. The question before the Court is whether the High Court can order the withdrawal of that case from the Magistrate Court and transfer it to the High Court.
15. The position taken by the Respondents is that the Amended Plaintiff was filed in a Court without jurisdiction. Hence it is a nullity and nothing flows from nothing. That it is as dead as the proverbial Dodo bird.
16. The Applicants on the other hand submit that their original claim was filed in a Court of competent jurisdiction. That it is the subsequent filing of the Amended Plaintiff that ought to be cured by the transfer. They submit that the original action is not a nullity.
17. In absence of the Respondents submissions, the Court has grappled with the case law this area.
18. In *Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service* [2019] KECA 767 (KLR) the Court of Appeal was of the view that a case filed in a Court without jurisdiction is a nullity.

“When a suit has been filed in a court without jurisdiction, it is a nullity. Many cases have established that, the most famous being *Kagenyi vs Musiramo* (1968) EA 43 The same would apply to pecuniary jurisdiction in a claim for special damages where the liquidated sum claimed exceeds the court’s pecuniary jurisdiction.

We hold that jurisdiction cannot be conferred at the time of delivery of judgment. Jurisdiction does not operate retroactively. Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.”

19. The Applicants take a different approach. That they filed the suit before a Court with competent jurisdiction. The amendment is a subsequent factor. That in as much as the Magistrate’s Court lacks



jurisdiction to deal with the Amended Plaintiff, the same is not lost, as it was not incompetent ab initio. That the cure lies in transfer of the suit after amendments, to a Court of competent jurisdiction.

20. They rely on the Court of Appeal decision in *Livingstone Maina Ombete v Kenya Power & Lighting Company Limited* [2017] KECA 624 (KLR) where the Court stated as follows;

“From the provisions of sections 17 and 18 of the *Civil Procedure Act*, there is no doubt that the High Court has power to not only transfer a suit from one subordinate court to the other but also to act on its own motion. We cite with approval the holding of Emukule, J in *Rapid Kate Services Limited vs. Freight Forwarders Kenya Limited & 2 Others* [2005] 1 KLR 292 where he expressed himself thus:

“The Court’s power to transfer proceedings from one Court to another is a useful corrective measure to ensure that proceedings wherever began or whatever forum the plaintiff has initially chosen should be dealt with or heard or determined by the Court most appropriate or suitable for those proceedings. When making or refusing an order for transfer the Court will have regard to the nature and character of the proceedings the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice. It is a discretionary power of the Court under section 3A of the *Civil Procedure Act*...”

21. They also rely on the *Masinde v Director of Public Prosecution & 2 others* [2024] KEHC 12751 (KLR). The question before the Court of Appeal was whether a transfer of suit could be allowed on the basis that the Plaintiff intended to amend the suit. The Amendment would have brought the suit within the jurisdiction of the High Court. The Court of Appeal stated as follows;

“This Court having reviewed the Applicant’s affidavit material agrees with the 2nd Respondent that the lower Court is duly seized of the suit as presented. The Applicant’s plea for re-transfer to this Court is premised on an amendment that is yet to be allowed. Clearly, the Applicant has placed the cart before the horse. Reasonableness would dictate that for the Court to entertain an application for transfer on grounds of pecuniary jurisdiction, the pleadings before the lower Court must first be amended. The directions of this Court on 30.05.2022 were premised on the material before the Court at the time. Thus, the Applicant has not evinced any justification for this Court to exercise its discretion by setting aside its earlier order and to re-transfer the suit in the subordinate court to this court.

The parties through their respective affidavit material addressed issues relating to amendment of the plaintiff. The position right now is that having transferred the subject suit to the lower court, this Court is no longer seized of matter, a fact acknowledged in the Applicant’s supplementary affidavit. The prayer for amendment cannot be entertained before this court, therefore.”

22. Lastly, they rely on *Intal Plastick Africa (K) Limited v C&S Properties Limited* [2025] KEHC 11730 (KLR). The transfer was sought at the High Court on the basis of a future amendment. The High Court took the position that this was not feasible and held as follows;

“It is however worth noting that the instant application is based on proposed amendments to the plaintiff dated 19th June 2020, which amendments had not been made at the time of filing the instant application. Further, at this juncture it is impossible to ascertain whether or not the applicant will be allowed to amend the said plaintiff to warrant the filing of an application pursuant to the provisions of Section 18 of the *Civil Procedure Act*. Having found that



the Magistrates' Court has the requisite pecuniary jurisdiction to hear and determine the applicant's suit filed vide a plaint dated 19th June 2020, an application for leave to amend the said plaint ought to have first been filed at the Magistrates' Court seized of the hearing of the said case, and only after being successful, would an application to transfer the suit under Section 18 of the *Civil Procedure Act* be appropriate. On that issue, I do agree with the argument made by Counsel for the respondent.

It is now well settled that Courts generally avoid making orders based on future, uncertain events. In the premise, this Court finds that it is only after the Magistrates' Court has determined whether or not to grant the applicant leave to amend its plaint, that this Court will be seized of the jurisdiction to entertain an application under Section 18 of the *Civil Procedure Act*.

In the end, I find that the applicant has not made out a case to warrant issuance of an order for transfer of Milimani Chief Magistrates' Court Case No. 2308 of 2020, from the lower Court to the High Court, for hearing and determination."

23. The Court has come across the decision of Peter M. Mulwa J, in *Mwangi v Mountain Top Publishers Limited* [2025] KEHC 6764 (KLR). The Court states as follows:

"The Plaintiff therefore seeks to have the suit transferred to the High Court to ensure it is heard by a court with competent jurisdiction. Section 18 of the *Civil Procedure Act* provides 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. 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.

Section 18 empowers the High Court to withdraw and transfer a suit pending before a subordinate court, either on application or suo moto. The discretion under this provision must, however, be exercised judicially. The Applicant must demonstrate compelling reasons to justify the transfer of the matter.



In *AO Basid Limited v ASL Credit Limited* [2019] eKLR, where in approval of the decision in *David Kabungu v Zikarengu & 4 others*, Kampala HCCS No. 36 of 1995, the Court stated as follows-

“Section 18 (1) (b) of the *Civil Procedure Act* gives the Court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the Court without application by any party...”

Additionally, Section 1A (1) of the *Civil Procedure Act* enshrines the overriding objective of the Act and the Rules made thereunder as being to facilitate the just, expeditious, proportionate, and affordable resolution of civil disputes. The transfer of this suit to a competent forum aligns with this objective and would avoid a situation where the court is unable to grant effective relief due to jurisdictional limitations.

I conclude that the applicant has established the requirements of Section 18 of the *Civil Procedure Act*.”

24. The position taken by the Court appears to lead to two doors. Where the initial suit was filed in a Court without jurisdiction, i.e. filing a claim of Kshs.21,000,000/= before the Chief Magistrate, that is a nullity. There would be nothing to transfer.
25. The other door is that when a matter is filed in a Court with jurisdiction, but subsequent matters arise that affect jurisdiction, the Court will allow a transfer. An example being a money claim where a substantial claim was left out and an amendment would take it out of jurisdiction. This is so as to save the case and place it before a Court with competent jurisdiction. This goes well hand in hand with the overriding objectives of the Courts.
26. It is not lost to this Court that if the Amended Plaintiff was to be struck out, the original action still remains. It will still be before a Court with competent jurisdiction, being the Magistrate’s Court.
27. In the circumstances, the transfer is sought to bring the Amended Plaintiff before the High Court, which is vested with jurisdiction is allowed.
 - b) Whether the application by way of the Notice of Motion dated 26.6.2025 is merited.
28. A raft of reliefs are sought by the Applicants including citing the Respondents for contempt of Court orders as well as injunctions.
29. The Court is of the view that such reliefs sought are premature. The suit is still before the Chief Magistrate Court. It is yet to be withdrawn from the Magistrate’s Court and transferred to this Court.
30. There are formalities to transferring a file including registering it at the Courts registry, assigning it a new case number, registering it on the CTS etc. It is only then that the Applicants can be heard to argue the application for the reliefs sought. As matters stand, that particular file is yet to be brought to this Court.
31. The Court is not persuaded that it can grant any of these orders sought, save for the order of transfer of suit. In the circumstances, the Court proceeds to strike out the application dated 26.6.2025 for being premature. The application ought to be filed in the file that will be opened relating to this matter in this Court.
32. As to the costs the Applicants are partially successful. The fair order in the circumstances is that there be no order as to costs.



Determination

33. The Applicants' application by way of a Notice of Motion dated 17.06.2025 is allowed in the following terms:
- a) That the Honourable Court Hereby withdraws and transfers the aforementioned case, Milimani CMCC No. E1074 of 2024, FairBanks Limited & Zeyana Enterprises Limited vs Alliance Leasing Limited and Timeless Dolphin Auctioneers, to this Court for trial and final determination.
34. The Applicants' application by way of a Notice of Motion dated 26th June, 2025 is hereby struck out for being premature.
35. There shall be no orders as to costs on both applications
36. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 23RD DAY OF OCTOBER, 2025.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Khisa for the 1st & 2nd Applicants.

Miss Ngetich for the 1st & 2nd Respondents.

Mr. Peter Wabwire - Court Assistant.

