



**Masia v Straight Security Services Limited (Miscellaneous Application
E221 of 2025) [2025] KEELRC 3032 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3032 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E221 OF 2025
SC RUTTO, J
OCTOBER 31, 2025**

BETWEEN

CHARLES SHAKAVA MASIA APPLICANT

AND

STRAIGHT SECURITY SERVICES LIMITED RESPONDENT

RULING

1. By a Notice of Motion dated 1st July 2025, the Applicant seeks an order for the transfer of MCELRC No. 1612 of 2019 to either the Kikuyu or Kiambu Law Courts.
2. The Application is anchored on the grounds set out therein and supported by the Affidavit sworn on 1st July 2025 by Sylvia M. Kitonga, Counsel on record for the Applicant. Ms. Kitonga avers that, due to an oversight by the Applicant's Advocates, the suit being MCELRC No. 1612 of 2019 was filed at the Milimani Law Courts instead of the Kikuyu or Kiambu Law Courts. She further states that the Applicant's Advocates were under the mistaken belief that the matter had been filed within the proper jurisdiction.
3. Ms. Kitonga has further stated that the Respondent's Advocates subsequently filed a Preliminary Objection contending that the Court at Milimani lacked geographical and territorial jurisdiction, as the Applicant was stationed at the Kiambu Sub-County offices within Kiambu County. According to Ms. Kitonga, there is a likelihood that MCELRC No. 1612 of 2019 may be dismissed for want of jurisdiction.
4. The Respondent opposed the Application through a Replying Affidavit sworn on 26th July 2025 by Francis Mwenda Munene. Mr. Munene who describes himself as the Respondent's Managing Director avers that the Application has been filed in an attempt to derail the proceedings before the lower court. He contends that the issues raised herein are identical to those pending before the said court and, therefore, the Application is sub judice.



5. Mr. Munene further deposes that should the Applicant be dissatisfied with the ruling of the lower court, he may file an appeal before this Court.
6. In his view, the present Application is a deliberate attempt to circumvent the hearing and determination of the Preliminary Objection raised by the Respondent, which remains pending before the lower court.
7. Mr. Munene asserts that the reliefs sought by the Applicant amount to an abuse of the Court's discretion and are intended to improperly invite this Court to interfere with a matter still pending before the subordinate court.

Submissions

8. On 11th July 2025, the Court directed that the Application be determined by way of written submissions. Both parties duly complied, and the Court has considered their respective submissions.

Analysis and Determination

9. I have considered the Application, the Respondent's Replying Affidavit, and the parties' respective submissions. It is apparent that the issue for determination is whether the Application has merit.
10. The power of this Court to order the transfer of a matter from one subordinate court to another is derived from Section 18 of the *Civil Procedure Act*. In essence, the provision empowers this Court, either on its own motion or upon application by any party, and after giving notice to the parties, to transfer or withdraw a case at any stage of the proceedings. In this regard, the Court may transfer a suit, appeal, or other proceeding to a subordinate court competent to hear and determine it, or withdraw the same from a subordinate court for its own determination.
11. It is not in dispute that, at the time of filing the present Application, the Respondent had already lodged a Notice of Preliminary Objection dated 15th May 2025 before the lower court in which it contends that the court lacks the geographical jurisdiction to entertain the suit.
12. It is further evident that directions had been issued regarding the disposal of the said Preliminary Objection, and the Respondent had filed its written submissions in that regard. Therefore, the Preliminary Objection is pending determination by the lower court.
13. In view of the foregoing, it would not be proper and judicious for this Court to grant the orders sought in the present Application, as doing so would in effect pre-empt and dispose of the Respondent's pending Preliminary Objection before the lower court. Such an action would be tantamount to this Court interfering with the administration of justice by the lower court.
14. For the foregoing reasons, the Application dated 1st July 2025 is disallowed with an order that each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Ms. Kitonga for the Applicant



Mr. Kiarie for the Respondent

Millicent Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

