



**HG v HKS (Miscellaneous Case 10 of 2023)
[2025] KEHC 15271 (KLR) (Family) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15271 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS CASE 10 OF 2023
HK CHEMITEI, J
OCTOBER 30, 2025**

BETWEEN

HG APPLICANT

AND

HKS RESPONDENT

RULING

1. The Applicant’s application dated 18th September 2024 seeks orders that the orders of this court dated 6th July 2023 dismissing this application be set aside and the matter be reinstated.
2. The application is based on the sworn affidavit of Victoria Njoroge counsel for the Applicant.
3. Her basic argument is that this matter was previously before the Commercial Division of this court where Justice Aleem Visram transferred it to this division on 11th May 2023.
4. Subsequently and after the above transfer a new number was given at the registry but her firm was not mapped. She was therefore unaware that the matter was due for mentioned before this court.
5. She exhibited various correspondences to the Deputy Registrar inquiring about the state of this matter. Their law firm came later on record and was able to file submissions.
6. It is her case therefore that substantial justice must be allowed to take cause rather than some technicalities which were not within her control.
7. The Respondent vide her replying affidavit sworn on 30th September 2024 has opposed the application vehemently on the grounds among others that a delay of one year and two months by the Applicant after the dismissal was inordinate in the circumstances.



8. That there was a pending divorce cause number E064 of 2021 in Kisumu which the Applicant has long attempted to delay by filing this application and more at Kisumu.
9. It was therefore her case that the dismissal of this case was properly done by this court for want of prosecution and that the same was filed with malice.
10. That the Applicant is guilty of laches and this court should not entertain the same.
11. In any event she went on the parties can still litigate online and from the comforts of their homes or offices without travelling physically to court.
12. The court has perused the application carefully and in particular the history of how the matter was dismissed.
13. The court has also perused the rival submissions on record together with the cited authorities.
14. I think to be fair to all the parties the transition between the Commercial to Family Divisions of this court may have caused some administrative challenges to the parties and I find the reason advanced by the Applicant reasonable.
15. The delay however to activate this file for over a year is obviously long and the Respondent is right on that ground.
16. Looking at what the application eventually intended to achieve, it was basically to transfer the divorce cause from Kisumu Chief Magistrate Court to Nairobi. I think the Applicant for whatever reasons wanted it that way.
17. What is however not denied by the Applicant is that the Kisumu matter has moved from the lower court to High Court courtesy of an appeal which the High court has since dismissed. So, in essence the only available opportunity now is to simply prosecute the substantive divorce cause.
18. What is concerning me though is not the back-and-forth applications between the parties but the manner in which the Applicant filed this application here in Nairobi yet the Kisumu high court for all intent and purposes has the immediate supervisory jurisdiction over its subordinate courts. What was so difficult in the Applicant seeking such transfer of the matter at Kisumu lower court to Nairobi High Court being filed at Kisumu High Court.
19. It is true that this court has countrywide jurisdiction but for purposes of order the immediate high court which in this case is Kisumu has jurisdictional, geographical as well as administrative jurisdiction to entertain the Applicants' application.
20. In other words, I find that it was out of order for the Applicant to have filed the application in the manner he did herein. It could have been easier and orderly to persuade the judge at Kisumu to transfer the matter to Nairobi for whatever reasons and I believe the court would have considered the request.
21. A classic example is the manner the Applicant filed the appeal from the trial court at Kisumu to the high court there. Why didn't he file the appeal elsewhere or here at Nairobi for that matter? It is because he respected the jurisdictional and administrative question alluded to above.
22. In view of my above observations and in invoking the inherent powers of this court I find that even if the court was to reactivate this matter, the substratum of it would have been the application dated 28th September 2022 seeking to have the matter adjudicated over by this court. Let him formally approach the Kisumu High Court for the relevant orders it was seeking. That was what the ruling of the trial court dated 24th August 2022 intimated.



23. Consequently, I do not find merit in the application for the reasons stated above and the same is hereby dismissed with no order as to costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 30TH DAY OF OCTOBER 2025.

H K CHEMITEI

JUDGE

