



**Mash East Africa Limited v Okumu & 3 others (Miscellaneous Civil Application E015 of 2025) [2025] KEHC 15432 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15432 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
MISCELLANEOUS CIVIL APPLICATION E015 OF 2025**

**AC BETT, J  
OCTOBER 31, 2025**

**BETWEEN**

**MASH EAST AFRICA LIMITED ..... APPLICANT**

**AND**

**COLLINS WANJALA OKUMU ..... 1<sup>ST</sup> RESPONDENT**

**HK (MINOR SUING THROUGH NEXT FRIEND AND FATHER  
AAK) ..... 2<sup>ND</sup> RESPONDENT**

**AA (MINOR SUING THROUGH NEXT FRIEND AND FATHER  
PAL) ..... 3<sup>RD</sup> RESPONDENT**

**GN (MINOR SUING THROUGH NEXT FIEND AND FATHER  
SAN) ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion dated 6<sup>th</sup> March 2025, the Applicant sought the following orders: -
  - (a) spent
  - (b) spent
  - (c) That this Honourable Court be pleased to transfer Kakamega Small Claims Court Cases Numbers SCCC E082/2025, SCCC E083/2025, SCCCE084/2025 and SCCC E082/2025 to Mumias Magistrate’s Court for hearing and determination;
  - (d) That the costs of the application be in the cause.



2. The Applicant swore an affidavit in support of the application in which the Applicant seeks to transfer four small claims cases (SCCC/E082 to E085 of 2025) from Kakamega Small Claims Court to Mumias Chief Magistrate’s Court. The claims arise from a road traffic accident that occurred on 24<sup>th</sup> November 2024 along Mumias–Kakamega Road, involving the Applicant’s Scania bus (KCQ 171L) and a motorcycle (KMFQ 150R) used by the Respondents. The Applicant contests liability and argues that the cause of action arose in Shianda, under the jurisdiction of Mumias Law Courts, and that hearing the cases in Kakamega prejudices the Applicant, and that it is in the interest of justice that the cases be heard in Mumias.
3. The Respondents assert that the court is properly established under Gazette Notice No. 13400 and is mandated to hear and determine the cases.
4. The application was canvassed through written submissions. The Applicant argues that since liability is disputed, the 60-day limitation period under Section 34(1) of the Small Claims Courts Act, 2016, was insufficient to entertain complex personal injury claims involving proper medical evidence and corroboration. The Applicant relies on the case of *Ogwari v Hersi (2023) KEHC 20111 (KLR)*, where it was held that an injury claim requiring thorough medical assessment is not suited to the Small Claims time-frame; and *East Produce Kenya Ltd v Osiro and Kier Mutuku v Kenya Cargo Hauling Services Ltd (1991)*, which laid the emphasis on establishing the negligence in its entirety.
5. On their part, the Respondents oppose the application, contending that the Kakamega Small Claims Court has proper jurisdiction to hear and determine the said suits
6. The Respondents rely on Section 14 of the *Civil Procedure Act* (Cap 21), which provides for the institution of a suit where the cause of action arose or where the defendant resides or works. Since the alleged tort occurred within the territory of Kakamega County, the Respondents submit that the suits were appropriately filed before the Kakamega Small Claims Court. Furthermore, the Respondents referred the Court to Section 34 of the *Small Claims Court Act*, 2016, whereby all claims had to be heard and determined within 60 days from the date of filing, and hearings and judgments had to be conducted promptly, save for exceptional circumstances. They therefore maintained that the Applicant’s allegation of likely delay due to only one adjudicator is speculative and not supported by any evidence.
7. In my view, the application raises one issue for determination: Whether the Applicant has established sufficient grounds for the transfer of Kakamega Small Claims Court Cases Nos. SCCC E082/2025, SCCC E083/2025, SCCC E084/2025, and SCCC E085/2025 to the Mumias Chief Magistrate’s Court. The issue will be determined in the following limbs.

## **Jurisdiction**

8. Under Section 14 of the *Civil Procedure Act*,

“Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of those courts.”
9. The road traffic accident forming the subject of these claims occurred at Shianda, along the Mumias-Kakamega road. The applicant argues that the cause of action arose in Shianda, which falls under the jurisdiction of Mumias Law Courts. Shianda is within Kakamega County, and the Mumias Law



Courts and Kakamega Small Claims Court operate in the same county. Section 14 of the [Civil Procedure Act](#) does not restrict jurisdiction to a specific court within the county where the cause of action arose, provided the court has the statutory mandate to hear the case.

10. In furtherance of Section 11 of the [Small Claims Court Act](#) vide Gazette Notice No. 13400 of 1st December 2021, the Chief Justice established the Kakamega Small Claims Court with jurisdiction covering the entire Kakamega County, including Shianda. The Respondents, therefore, were not in error in filing the cases at Kakamega Small Claims Court. However, jurisdiction alone does not preclude a transfer if the interest of justice demands it, as provided under Section 18 of the [Civil Procedure Act](#).

## Transfer

10. The power to transfer cases is governed by Section 18 of the [Civil Procedure Act](#) (Cap 21), which grants the High Court discretion to transfer a suit from one court to another in the interest of justice. I am guided by the case of David Kabungu v. Zikarenga & 4 Others, Kampala HCCS No. 36 of 1995 (unreported) which has been cited in various cases, including and not limited to Victoria Katuku (Suing as the legal Representative of the Estate of Eunice Mueni Muthamba) v Jessinkay Enterprises & 2 others [2017] eKLR.

Okello J. pronounced himself as follows:-

“Section 18(1) 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. 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 a particular court for the purposes of working injustice. What the court has to consider is whether the Applicant has made a case to justify it in closing doors of the court on which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction... It is a 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 expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication 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 could be refused...”

11. The argument by the Applicant is founded upon the place where the cause of action arose and the complexity of the cases, which I shall touch upon in the next limb. The Applicant argues that the cause of action arose in Shianda, within Mumias’ jurisdiction, and that the Kakamega Small Claims Court’s backlog undermines its ability to hear the cases within the 60 days mandated by Section 34(1) of the [Small Claims Court Act](#), 2016. The backlog is a significant factor, as judicial notice can be taken of Small Claims Courts’ administrative challenges, including delays caused by case overloads. The Applicant has thus made a compelling case, satisfying the court that the backlog, jurisdictional alignment with Shianda, and claim complexity justify transferring the cases to Mumias Chief Magistrate’s Court to prevent injustice and uphold the interest of justice.



## Contested Liability and Suitability of Small Claims Court

12. The Applicant argues that the nature of the dispute as a contested civil liability claim would entail intense medical examination, including second opinions, which could not reasonably be done within the 60-day disposal period contemplated under Section 34(1) of the *Small Claims Court Act*, 2016. The Court finds merit in this argument, as supported by the decision in *Ogwari v Hersi* (Civil Appeal 223 of 2022) [2023] KEHC 20111 (KLR), where Magare J held that injury claims involving disputed liability and medical evidence are ill-suited for expeditious timelines under the Small Claims Court regime. He stated that:-

“... However, for injury claims, there is a need to have a more thorough review of medical evidence, including having a second medical examination. To fully and properly defend such claims, 60 days will definitely be insufficient.”

13. Similarly, in *Eastern Produce (K) Ltd v Christopher Atiado Osiro* [2006] KEHC 3200 (KLR), the court held that:-

“It is trite that the onus of proof is on he who alleges and in matters where negligence is alleged the position was well laid down in the case of *Kiema Mutuku v. Kenya Cargo Hauling Services Ltd* (1991) 2 KAR 258, where it was held that “there is as yet no liability without fault in the legal system in Kenya, and a plaintiff must prove some negligence against the defendant where the claim is based on negligence”.”

14. In my considered view, while the Small Claims Court has statutory jurisdiction, the complexity and nature of the dispute render the forum procedurally unsuitable to do justice to the parties, particularly where liability is intensely contested and additional expert evidence is required. This is in view of the massive backlog of cases in the Small Claims Court, which is still understaffed. It is trite law that justice must not only be done but it must be seen to have been done. Faced with myriad claims and parties' demands for expedited hearings, it is doubtful that the parties would be satisfied that complex issues can receive the due attention they deserve if matters herein were to proceed before the Small Claims Court. Perhaps when the courts are sufficiently manned, can the parties, such as the Applicant, perceive that the Small Claims Court can deliver justice in a claim arising from a road traffic accident where liability is contested.

15. Article 159(2)(b) enjoins the courts to ensure that justice is not delayed. In exercising judicial authority, it is the court's duty to ensure that matters pending before it are disposed of in the manner envisaged by *the Constitution* of Kenya and Section 1A and 1B of the *Civil Procedure Act*, which prioritizes the just, expeditious, proportionate, and affordable resolution of disputes. The bottleneck created by the avalanche of cases filed before the Small Claims Court has made the expectation of parties to have their matters determined within 60 days a mirage for many. My understanding is that the Applicant is seeking a way out of this bottleneck.

16. I find that the backlog at Kakamega Small Claims Court, combined with the complexity of the personal injury claims and the location of the cause of action in Shianda, justifies the transfer to ensure a fair and timely hearing in the interest of justice.

17. In conclusion, this Court finds that the Applicant has made a compelling case for transferring the suits to the Mumias Chief Magistrate's Court. I now make the following orders:-

(a) The application dated 6th March 2025 is hereby allowed.



- (b) Kakamega Small Claims Court Cases Nos. SCCC E082/2025, SCCC E083/2025, SCCC E084/2025, and SCCC E085/2025 are hereby transferred to the Mumias Chief Magistrate's Court for hearing and determination.
- (c) There shall be no order as to costs.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 31<sup>ST</sup> DAY OF OCTOBER 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

No appearance for the Parties

Court Assistant: Polycap

