

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CIVIL MISC APPLICATION NO E272 OF 2025**

**MADISON INSURANCE COMPANY  
LIMITED.....APPLICANT**

**VERSUS**

**FLORENCE KAGENDO MBOGOH (suing as the  
administrator**

**of the estate of the late**

**GODFREY KISINGU NJEDI(DECEASED).....1<sup>ST</sup>**

**RESPONDENT**

**MERCYLYNE AMAGOVE MUNGASIA & GEOFFREY MULU**

**ATUMA (suing as personal representative of the estate of**

**GODFREY KISINGU NJEDI(DECEASED)..... 2<sup>ND</sup>**

**RESPONDENT**

**RULING**

1. Before this court is a Notice of Motion Application dated 21/08/2025 wherein the applicant sought the following orders;

***a. Spent***

***b. Spent***

***c. THAT upon grant of prayer (b) above, this Honourable Court be pleased to issue an order transferring the two matters to Kangundo Magistrate Court for just determination alongside the other related matters being Kangundo CMCC NO. E149 of 2024 Florence***

***Kagendo Mbogoh (suing as the administrator of the estate of the late Godfrey Kisingu Njedi-Deceased) and Kangundo CMCC NO. E100 of 2025 Mercylyne Amagove Mungasia & Geoffrey Mulu Atuma (suing as personal representative of the estate of Godfrey Kisingu Njedi-Deceased) vs Madison General Insurance Co. Ltd.***

2. The gist of the application is that the Applicant and the Respondents have matters at the Kangundo Magistrates Court touching on the same subject matter which is a motor accident which occurred on 1/01/2023 and it is imperative that the matters filed in the Machakos CM's Court be transferred to Kangundo Law Courts for a just and expeditious determination.
3. In opposition, Morris M. Kahingi, Advocate for the Respondents, filed a replying affidavit sworn on 21/09/2025 where he deposes that stay of proceedings is a serious, grave and fundamental interference to a party's right to conduct litigation and should be denied. That the Applicant filed a similar application in MACHAKOS CMCC NO. E458 of 2024 and that there was no justification for transfer of the suits as they were being heard by court of competent jurisdiction. Counsel contended that this application is devoid of merit for reason that it does not conform to the conditions for stay of proceedings and transfer of civil suits as envisaged under the Civil Procedure Rules and the Civil Procedure Act.

4. The application was to be canvassed by way of written submissions but as at the time of writing the ruling, only those of the Applicant submissions were on record.
5. The Applicant reiterated the issues raised in the supporting affidavit and while relying on the cases of **Julius Lekuruito & another vs Nottingham Mwangi & another (2018) eKLR** and **HCCCMISC NO. 19 of 2023 Stephen Mburu Gitere vs Salene Credit Limited & another (2025) eKLR**, submitted that allowing the application will reduce the expenses spent in defending the declaratory suits as well as prosecuting the disclaimer suit by the Applicant.

#### **Analysis and determination.**

6. I have considered the application, the affidavits, the submissions and the law. It is not in dispute that the Applicant herein filed a disclaimer suit at the Kangundo Magistrates court, to wit, **CMCC No. E117 of 2023** and that before the Magistrates Court in Machakos there are two suits; **MACHAKOS CMCC NO. E445 of 2024** and **MACHAKOS CMCC NO. E458 of 2024** which are declaratory suits arising from decrees from Machakos Small Claims Court No. E561 and E563 of 2023.
7. As correctly submitted by the Applicant, transfer of cases from one subordinate court to another is provided for under **Section 18(1)** of the **Civil Procedure Act which states:**

***“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.”***

8. The power of the court is discretionary and unfettered. However, an applicant is required to give sufficient reasons for the court to exercise discretion in their favour. I have considered the nature of the cases at Kangundo and the cases in Machakos which it is urged should be transferred to Kangundo. In my view the reliefs sought are distinct and nothing prevents the cases from being heard in different courts. Moreover, the cases in Machakos are declaratory suits arising from decisions of the Small Claims Court in Machakos and it would be in the interests of the administration that they are heard in Machakos. The Applicant's reasons for seeking a transfer of the costs are not convincing and in the premises the application is rejected and it is ordered that the cases shall continue where filed.

9. The upshot is that the application is dismissed. The applicant shall bear the costs thereof.

Orders accordingly.

**Ruling signed, dated and delivered virtually on this 14<sup>th</sup> day of November 2025.**

**E. N. MAINA  
JUDGE**

**IN PRESENCE OF:**

Ms Muyuka for Ontegi Advocate for the Applicant

No appearance for the Respondent

C/A: Geoffrey

ORIGINAL