

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI
FAMILY DIVISION
CIVIL SUIT NO. E027 OF 2025

KAHUHA NDUNGU **APPLICANT**

~VERSUS~

CHRISTELE WAYUA MULI **RESPONDENT**

RULING

1. The Applicant has filed Notice of Motion dated 23 September 2025 seeking the following orders:
 - (i) The Honourable Court be pleased to transfer this suit to the Milimani Commercial Magistrate Court - Family Division for hearing and determination.
 - (ii) The costs of this Application be in the cause.

2. The Application is premised on the following grounds:
 - (i) The Milimani Commercial Magistrate Court - Family Division has both territorial jurisdiction to hear and determine this suit;
 - (ii) No prejudice shall be occasioned to the Respondent if the suit herein is transferred to the Lower Court for hearing and determination;
 - (iii) Both the Applicant and the Respondent are residents and indeed reside within the jurisdiction of the Milimani Commercial Magistrate Court;

- (iv) It is only fair that this application is allowed.
3. The Application is supported by an Affidavit sworn by the Applicant.
4. The law relating to transfer of suits is contained in Section 18 of the Civil Procedure Act. Section 18(1)(b)(ii) which gives the Court discretionary powers 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. ...

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

5. While exercising its discretion set out in Section 18, the Court will be mindful of the balance of convenience, questions of expense, interests of justice and possibilities of undue hardship that may be occasioned to the parties. These principles were set out in the case of ***Kageny vs Musiramo & Another [1968] E. A. 43*** as follows:

“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 a strong case to the satisfaction of the Court that the application ought to be granted. There are also authorities stating that the principle matters to be taken into consideration are balance of convenience, questions of expense, interests of justice and possibilities of undue hardship; and if the Court is left in doubt as to whether under all circumstances it is proper to order a transfer, the application must be refused.”

6. In the present case, the Court with territorial and pecuniary jurisdiction is the Chief Magistrate’s Court at Milimani.
7. I, therefore, allow the Application and make the following orders:
 - (i) This matter is hereby transferred to the Milimani Commercial Magistrate Court - Family Division for hearing and determination;
 - (ii) The costs of this Application shall be in the cause;
 - (iii) Matter to be mentioned before the Chief Magistrate on 18 November 2025.

DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF NOVEMBER 2025

**HELENE R. NAMISI
JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For Applicant: N/A

Ruling

Milimani Family Civil Suit No. E027 of 2025

Court Assistant:

Lucy Mwangi

Ruling