



**Ndungu v Mubichi & another (Civil Miscellaneous Application
E220 of 2025) [2025] KEHC 17160 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17160 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL MISCELLANEOUS APPLICATION E220 OF 2025
DO CHEPKWONY, J
NOVEMBER 13, 2025**

BETWEEN

NANCY NJOKI NDUNGU APPLICANT

AND

DENNIS NGESU MUBICHI 1ST RESPONDENT

STEPHEN CERU 2ND RESPONDENT

RULING

1. For determination is the Notice of Motion application dated 3rd September, 2025, wherein the Applicant is seeking the following orders:-
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. That this Honourable Court be pleased to issue an order transferring Kiambu CMCC NO E388 of 2024 Nancy Njoki Ndungu V Dennis Ngesu Mubichi and Stepgen Ceru to the Milimani Commercial Magistrate court or any other court with competent jurisdiction to hear and dispose the suit.
 - e. That the costs of the application be in the cause.
 - f. That the Court issues any other order as it deems fit and just.
2. According to the Applicant, this suit arises from a from road traffic accident which occurred along Thika Superhighway near Githurai Dam and The suit was filed in Kiambu Magistrates Court. However, the trial Magistrate in Kiambu Chief Magistrate's Court indicated that it lacks territorial jurisdiction to handle the matter and that the same ought to have been filed at Milimani Commercial



Court. It is for this reason that the Applicant has approached this Court seeking to have the suit transferred to Milimani Chief Magistrate’s Court to enable her proceed with the case so that she does not waste the filing fees of Kshs.71,000/= and related costs already paid to Kiambu court. She further contends that she stands to suffer prejudice if the orders sought are not granted and avers that the Respondents will not be prejudiced in any way if the order is granted.

3. The application was considered and directions issued that the matter be mentioned on 11th October, 2025. The application and directions (Mention Notice) were served upon the Respondents and there is an Affidavit of Service filed by Donald Okonda sworn on 23rd September, 2025 confirming the said service. The court notes that Mention Notice slated for 11th October, 2025 was also served upon the Respondent and an Affidavit of Service by the same deponent was sworn on 14th October, 2025.
4. It is clear that the Respondents have not filed a response to the application or attended court by themselves or representation to explain their absence despite having been served with the application and notice

Analysis and Determination

5. I have read through the Notice of Motion application alongside the Supporting Affidavit and find that the main issue for determination is whether the application seeking the transfer of the suit is meritable?
6. The jurisdiction of the High Court to transfer suits from one Court to another is provided for under Section 18 of the [Civil Procedure Act](#) which states 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. 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
 - c. 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.
- (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”



7. The circumstances under which an order to transfer a suit may be granted was expounded in the case of David Kabungu –vs- Zikarenga & 4 Others Kampala HCCS No. 36 of 1995, 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...”

8. However, the court finds that since it is admitted by the parties that the cause of action arose along Thika Superhighway around Githurai dam, then in terms of territorial jurisdiction, the most appropriate court would be Milimani Commercial Magistrate court.

9. For those reasons, the court finds that the application is merited and the same is allowed in the following terms:-

- a. Kiambu CMCC No E388 of 2024 Nancy Njoki Ndungu V Dennis Ngesu Mubichi and Stephen Ceruis hereby withdrawn from Kiambu Chief Magistrate’s Court and the same is transferred to Milimani Commercial Chief Magistrate Court for trial and disposal.
- b. The matter to be placed before the Chief Magistrate’s, Milimani Law Courts for directions.
- c. The costs of this application to be in the main cause.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 13TH DAY OF NOVEMBER ,2025.

D. O. CHEPKWONY
JUDGE

