



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wilka General Merchants Ltd v Farmers Fresh Feeds Limited (Miscellaneous Civil Application E134 of 2025) [2025] KEHC 16951 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16951 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CIVIL APPLICATION E134 OF 2025  
FN MUCHEMI, J  
NOVEMBER 13, 2025**

**BETWEEN**

**WILKA GENERAL MERCHANTS LTD ..... PLAINTIFF**

**AND**

**FARMERS FRESH FEEDS LIMITED ..... DEFENDANT**

**RULING**

**Brief facts**

1. The application dated 21<sup>st</sup> July 2025 seeks for orders of transfer of Thika MCCC No. E705 of 2025 to the Principal Magistrate's Court at Kandara on the basis of territorial jurisdiction as the respondent is a resident in Kenol, Murang'a County.
2. The respondent opposed the application and filed Grounds of Opposition dated 4<sup>th</sup> August 2025.

**Applicant's Case**

3. The applicant instituted a suit against the respondent in Thika MCCC No. E075 of 2025 for breach of contract in the sum of Kshs. 8,206,684/- together with costs and interest based on the respondent's provided address vide registered post. However, the applicant states that it has established during service that the respondent's actual and physical residence is in Kenol, Murang'a County which court falls under the jurisdiction of Kandara Magistrate court. As such the right court to adjudicate the matter would be the Kandara Law Courts which has both the pecuniary and territorial jurisdiction to hear and determine the matter.
4. The applicant avers that the suit in Thika MCCC No. E075 of 2025 is still at the preliminary stage and has not been set for hearing and thus no prejudice shall be occasioned to the respondent by the transfer.



### **The Respondent's Case**

5. The respondent argues that the suit filed is a nullity and thus the present court has no jurisdiction to transfer a nullity. As such, the respondent states that the applicant ought to withdraw the suit and file it in the correct court.
6. Parties put in written submissions.

### **The Applicant's Submissions.**

7. The applicant relies on Section 18(1) of the *Civil Procedure Act* and the cases of *Waweru vs Prime Auto Solutions Limited* (Miscellaneous Civil Application E053 of 2023) [2024] KEHC 1971 (KLR) and submits that the suit was instituted in Thika Law Courts based on the respondent's registered postal address and it was only during service that the process server was directed to Kenol where it was established that the respondent's office is situated.
8. The applicant further relies on the cases of *Grace Thogori Komo vs Dan Njagi Ndigwa* [2013] KEHC 5024 (KLR); *Allan Mupe Bakari vs Diani Sea Lodge* [2020] KEHC 8201 (KLR) and *Wycliffe Mwangaza Kihugwa vs Grainbulk Handlers Limited* [2014] KEHC 6159 (KLR) and argues that the respondent shall not be prejudiced if the suit is transferred to Kandara Law Courts as it would be afforded an opportunity to defend the suit on its merits. Further, the applicant submits that it would be given an opportunity to prosecute its claim without incurring additional filing fees of Kshs. 75,000/-. Relying on the decision in *Hanzhou Agrochemicals Industries Ltd vs Panda Flowers Ltd* [2012] eKLR, the applicant submits that the respondent shall not suffer and be prejudiced, hardship or inconvenience if the suit is transferred and further that it has met the threshold for transfer of cases and urges the court to do the same for purposes of enhancing the proper administration of justice.

### **The Respondent's Submissions**

9. The respondent relies on Section 15 of the *Civil Procedure Act* and the cases of *Owners of the Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd* [1989] eKLR; *Ndigwa vs Promasidor Kenya Limited* [2025] KEELRC 237; *Phoenix of E.A Assurance Company Limited vs S. M. Thiga t/a Newspaper Service* [2019] KECA 767 (KLR) and *Rasanga vs Siaya Medical Hospital Limited* (Commercial Case E006 of 2022) [2024] KEHC 949 (KLR) and submits that the suit was filed is incompetent for want of jurisdiction as they are domiciled in Murang'a County. Thus, an order for transfer from one court to another cannot be made unless the suit has been in the first place brought to a court which has jurisdiction to try it. The respondent argues that the applicant ought to withdraw the current suit and file it in the appropriate court, within Murang'a County.

### **The Law**

10. Section 18 of the *Civil Procedure Act* provides:-

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.

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

- 11. Section 18 of the Act empowers the High Court to withdraw and transfer a case instituted in a subordinate court on application of any of the parties or on its own motion. For the court to grant an order of transfer the applicant must satisfy the court as to the reasons for such orders.
- 12. This principle was enunciated in the Ugandan case of David Kabungu vs Zikarenga HCCC No. 36 of 1995 which held:-

Section 18(1)(b) 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 the 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 a 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. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in 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 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 expense, interest of justice and possibilities of undue hardship, and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application 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 which transfer is sought has no jurisdiction to try the case, transfer would be refused.....

- 13. In the case of Hanzhou Agrochemicals Industries Ltd vs Panda Flowers Ltd [2012] eKLR the court held:-

In my view, which view I gather from authorities and from the law. The court should consider such factors as the motive and character of the proceedings, the nature of the relief of remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under all circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case.

- 14. From the record, vide Plaintiff dated 30<sup>th</sup> September 2024, the applicant instituted a suit against the respondent in the Chief Magistrate's Court in Thika namely MCCC/E705/2024 for breach of contract for a sum of 8,206,684/- together with costs and interest. The plaintiff was served upon the



respondent and they affixed their stamp which bears the postal address P.O. Box 1064 Thika. The applicant argues that it is not until service that it established that the respondent resides in Kenol which falls within Murang'a County and the said suit ought to be heard at Kandara Law Courts before the magistrate over there who possesses both the requisite territorial and pecuniary jurisdiction under the law.

15. Section 15 of the *Civil Procedure Act* provides:-

Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

- a. The defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- b. Any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
- c. The cause of action, wholly or in part, arises.

16. The respondent relied on two cases where courts have held that that once a suit is filed in the wrong court, it becomes incompetent and cannot be transferred by the High Court under Section 18 of the *Civil Procedure Act* to another court for hearing and determination. The respondent argued that such a suit, by the act of having been filed in the wrong court is rendered incompetent and incapable of transfer. However, the respondent did not cite any provision to that effect.

17. The first case of the respondent is that of Equity Bank Limited vs Bruce Muties Mutuku t/a Diani Tour Travel [2016] eKLR held:-

In numerous decided cases, courts including this Court have held that it would be illegal for the High Court in exercise of its powers under Section 18 of the *Civil Procedure Act* to transfer a suit filed in a court lacking jurisdiction to a court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred.

18. Similarly in Abraham Mwangi Wamigwi vs Simon Mbiriri Wanjiku & Another [2012] eKLR, the Court of Appeal held:-

It is therefore trite that where a suit is instituted before a tribunal having no jurisdiction, such a suit cannot be transferred under Section 18 aforesaid to a tribunal where it ought to have been properly instituted. The reason for this is that a suit is filed in court without jurisdiction is a nullity in law and whatever is a nullity in law is in the eyes of the law nothing and therefore the court cannot purport to transfer nothing and mould it into something through a procedure known as transfer. In other words, courts can only transfer a cause whose existence is recognized by law.

19. However, Article 159(2) (d) of *the Constitution* provides that:-

“Justice shall be administered without undue regard to procedural technicalities”

This is a duty imposed upon courts to disregard technicalities in the course of administration of justice. A cursory look at Section 18 which provision donates power to this court to withdraw and



transfer cases before magistrate's court does not state that cases filed in the wrong court are rendered incompetent by the act of approaching the wrong court. Even if there was such an indication under the said provision it is my view that each case must be decided on its own facts.

20. In the case of John Mwangi Karanja vs Alfred Nduangui (2011) eKLR the court held:-

“With the enactment of Sections 1A and 1B of the *Civil Procedure Act*, the time has perhaps now come for this matter of transfer of suits to be looked at afresh. It appears to me that transfer of suits from one court to another is essentially a procedural issue that has been elevated to the status of jurisdiction. If a suit finds itself in the wrong court, surely it is in the interests of justice and in the interests of all concerned that the suit be forwarded to the appropriate court of jurisdiction so that the issues in dispute can be properly and finally adjudicated without prejudice would a party suffer in that event? After all, the overriding objective of the procedure Act and Rules is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act (Section 1A(1)). The court itself is enjoined by subsection (2) of that section to seek to give effect to the said overriding objective in exercising its powers under the Act or the interpretation of any of its provisions.”

21. The applicant's counsel explained in the supporting affidavit that the filing of the case in Thika Magistrate Court was caused by the fact that the registered postal address of the respondent was of Thika. It was later during service that it was discovered that his physical residence was in Kenol, Murang'a County. This explanation was not challenged by the respondent and in my view, the error was a technicality that led to the counsel filing the case in the wrong court. Such an error should not be used to declare the applicant's case a nullity. It is important to note that the relevant law, that is Section 18 of the *Civil Procedure Act* has no provision declaring any suit a nullity.

22. The overriding objective spelt out under Section 1A and 1B of the Act enjoins the court to use its powers to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes under the Act.

23. In my considered view, this court is empowered by Section 18 of the Act to transfer this suit to the right court in the spirit of *the Constitution* and that of the Overriding Objective.

24. I find that the applicant has made a case for withdrawing and transferring Thika MCC/E0705/2025 from Thika Chief Magistrate Court to Kandara Principal Magistrate Court.

25. The application dated 21<sup>st</sup> July 2025 is merited and is hereby allowed in terms of prayer 2 of the application.

26. Costs of this application to the respondent.

27. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13<sup>TH</sup> DAY OF NOVEMBER 2025.**

**F. MUCHEMI**

**JUDGE**

