

**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. E002 OF 2024**

**HON. ONESMUS MUTHOMI**

**NJUKI.....PLAINTIFF/RESPONDENT**

**VERSUS**

**WILBERFORCE**

**NTWIGA.....DEFENDANT/APPLICANT**

**RULING**

1. This ruling is in respect to the Application dated 6<sup>th</sup> November 2024. The Application sought the following orders: -

(i) Spent

(i) That the court lacks the jurisdiction to hear the suit and the Applications dated 16<sup>th</sup> September 2024 and 1<sup>st</sup> October 2024.

(iii) That the suit and the Applications dated 16<sup>th</sup> September 2024 and 1<sup>st</sup> October 2024 be transferred to a court of competent jurisdiction within Kiambu County for hearing and determination.

2. The Application is founded on the grounds set out on its face and on the supporting affidavit of even date of Wiberforce Ntwiga, the Applicant and the supplementary affidavit dated 22<sup>nd</sup> January 2025. He deposed that he lives in Kahawa Sukari in Kiambu County where he has been a resident for the last nine years.

3. He averred that the suit against him relates to social media posts which would have been made within Kiambu County where he resides. That he is a former Chief Officer Youth and Sports, Tharaka Nithi County and the fact that worked in the Tharaka Nithi County

Government does not make him a resident of the County for purposes of place of filing the suit.

4. He also stated that the social media posts that the defamation suit relates to were allegedly made from 31<sup>st</sup> August 2024 and in the month of September after he had left his work station.
5. He stated that the Plaintiff/Respondent should not be at liberty to file a matter in a court geographically convenient to him thus the present suit should have been filed within Kiambu County. Further, that no prejudice would be suffered by an order transferring the suit since the Defendant and the advocates representing both parties have offices close to Kiambu and Thika High courts which are competent to hear and determine the matter.
6. He further averred that the Plaintiff who was a friend and confidant did not provide any other addresses he

presumes to be the Applicant's homes. Other than his only known residence in Kiambu from where he allegedly made the Facebook posts from.

7. The Plaintiff/ Respondent filed a replying affidavit dated 20<sup>th</sup> January 2025. He stated that the territorial jurisdiction contemplated by Section 15 of the Civil Procedure Act applies only to subordinate courts not the High Court. Further, that the High court has unlimited original jurisdiction in civil and criminal matters pursuant to Article 165 (3) of the Constitution which is not limited to the territory of the cause of action.

8. He stated that a party seeking to oust the jurisdiction of one station of the High Court in favour of another must go beyond the face value of the tenets of convenience under Section 15 of the Civil Procedure Act and the applying party must demonstrate that

the right to access justice under Article 48 of the Constitution is at threat which the Applicant has not demonstrated. Further, that the suit is being conducted virtually eliminating any chances of the Defendant and his advocates being inconvenienced while prosecuting the case.

9. He stated that the Defendant has failed to demonstrate that the cause of action arose within Kiambu County or that he resides in Kiambu County.

10. The Application was canvassed by way of written submissions. The Applicant filed his written submissions dated 28<sup>th</sup> February 2025 while the Respondent filed his written submissions dated 3<sup>rd</sup> March 2025. They both raise one sole issue for determination being whether the court has the jurisdiction to hear and determine the suit and the Applications.

11. From the pleadings and submissions, the single issue for determination is whether this court has jurisdiction to hear and determine the suit, and if not, whether the matter should be transferred to a court of competent jurisdiction within Kiambu County.

12. It is trite that jurisdiction is everything and once a court realizes it has no jurisdiction, it must down its tools immediately. This principle was well elaborated in the case of **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1** where the Court of Appeal held: -

***“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the***

***matter before it the moment it holds the opinion that it is without jurisdiction.”***

13. The Applicant in his submissions reiterated the averments in his affidavits maintaining that he resides at Kahawa Sukari in Kiambu County. It was his position that the said posts were made from 31<sup>st</sup> August 2024 and in the month of September 2024 long after he had left employment.

14. He submitted that Section 14 of the Civil Procedure Act provides 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. Further, that Section 15 of the Civil Procedure Act limits issues of territorial jurisdiction to the magistrate's courts since the said procedural law governs practice for both the High court and Subordinate courts.

15. The Applicant argued that from the above provisions, the plaintiff has an option of instituting the suit in a court whose jurisdiction either the cause of action arose or where the defendant resides. He relied on the case of **Atta (Kenya) Ltd v Nesfood Industries Ltd [2012] KEHC 5428 KLR** where the court opined that the purpose of Section 15 of the Civil Procedure Act is to ensure that suits are filed in the place that is most convenient and cost effective.

16. It was his submission that the claim that the matter will be heard virtually is moot since the court has not given directions on how the matter will

heard. Further, that he faces grave accusations which have suspended his right to expression as provided under Article 33 of the Constitution. He relied on the case of **Jacqueline Okuta & Another v Attorney General & 2 Others [2017] KEHC 8382 (KLR)** that emphasizes that the freedom of expression in a spirited democracy is a highly valued treasure. And in the case of **Hangzhou Agrochemical Industries Ltd V Panda Flowers Limited [2012] KEHC 1937 (KLR)** where the court held that courts should consider such factors as the motive and character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice.

17. The Applicant further argued that even if the Plaintiff's claim for defamation was to succeed the

damages awarded would not exceed the pecuniary jurisdiction of the Magistrate' court. He relied on the case of Selina **Vukinu Ambe v Ketan Shashikant Khatri [2020] KEHC 598 (KLR)** where the court opined that the Plaintiff's case was based on a tort of defamation and given the alleged defamatory posts and the forum they were published it was unlikely that damages would exceed Kshs. 20,000,000 which is the pecuniary jurisdiction of the lower court. Further, in this authority, the court transferred the matter to the Chief Magistrate's court in Milimani on account that it was unable to determine as a fact whether the Defendant worked for gain in Nairobi or Machakos but was filed in Nairobi. The Applicant also cited **Ndegwa v Mwaura & Another [2023] KEHC 21715 (KLR)** where the court stated that a suit

ought to be filed in the lowest court of competent jurisdiction.

18. The Respondent on his part submitted that this court derives jurisdiction from the constitution and not the Civil Procedure Act. he relied on the case of **Ruth Gathigia Kamunya & Another v George Kimani [2015] eKLR** where the court opined that the Civil Procedure Act in its long title it is expressed as An Act of Parliament to make provision for Procedure in Civil Courts. He submitted following the rationale in this authority, the legal instrument conferring jurisdiction upon the High Court is Article 165 (3) which grants unlimited original jurisdiction in criminal and civil matters and does not include a geographical limitation to its mandate.

19. The Applicant contends that the territorial jurisdiction contemplated in Sections 14 and 15 of

the Civil Procedure Act applies only to lower court as was quoted in **Jedidah Katwa Kweyu v John Njoroge Ngige & Another [2015] KEHC 2040 (KLR)** as follows:- -

***Ringera J (as he then was) in a decision in Mohamed Sitaban Vs George Mwangi Karoki CA No. 13/2002 expressed himself thus, concerning the above perceived conflict:***

***“Section 3 (2) of the Magistrate’s Courts Act provides that a court of the Resident Magistrate (which is defined to include a Senior Principal Magistrate’s Court has jurisdiction throughout Kenya. Such a court is not the subject of the local jurisdiction contemplated by Section 15 of***

***the Civil Procedure Act. In my opinion, Section 15 of the Civil Procedure Act applied only to courts lower than the Resident Magistrates' Court. I am fortified in that view by the fact that the Magistrate's Courts Act, Cap 10 of the Laws of Kenya, was enacted in 1967 long after the Civil Procedure Act.***

***The legislature was therefore aware of the provisions of Section 15 of the Civil Procedure Act and the hallowed rule of Statutory construction that where two provisions in different statutes conflict, the provisions in the latter statute is deemed to amend the earlier provision must be applied. Accordingly, I find that the Bungoma court had jurisdiction to***

***entertain the suit and the rule that suit filed in a court without jurisdiction is a nullity and cannot be transferred is inapplicable in the circumstances of this case. There may be sound administrative reasons for filing suits in administrative Districts in which the Defendant resides as the cause of action but those reasons cannot oust the statutory jurisdiction”.***

20. The Respondent further submitted that in the present suit it is difficult to determine the location where the cause of action arose since it is associated with the use of social media unlike physical causes of action whose jurisdiction can be determined. That the Applicant has failed to prove on a balance of probabilities that the cause of action arose within Kiambu county or that he resides in the said County.

21. He contended that there were conditions to be met for a party to succeed in ousting the jurisdiction of one station of the High Court in favour of another. He relied on the case of **Atta (Kenya) Limited v Nesfood Industries Limited [20120 KEHC 5428 (KLR)]** where the court held as follows: -

***“Be that as it may, given that the Constitution of Kenya Act, 2010 gives this court unlimited original jurisdiction in civil and criminal matters, and given the supremacy of the Constitution over the Civil Procedure Act, and given further that Article 159 (2) (d) of the Constitution vouches for substantive justice even in the face of procedural technicalities, a party seeking to oust the jurisdiction of one station of the High Court in favour of***

***another, must, in my view go beyond the face value of the tenets of convenience stipulated in Section 15 of the Civil Procedure act. At the minimum, the applying party must demonstrate that the right of access to justice under Article 48 of the Constitution is at threat. This should be advanced by placing before the court material showing that beyond the pillars of convenience stipulated in Section 15 of the Civil Procedure Act, there is a verifiable motive on the part of the Plaintiff to use geographical inconvenience to defeat the substantive ends of justice. A mere apprehension of such a possibility may not suffice. Further, the Applicant should***

***demonstrate that it has come to court at the earliest opportunity with its request.”***

22. Lastly, the Respondent submitted that the Defendant had substantially submitted to the jurisdiction of this court having filed a Notice of Preliminary objection raising the doctrine of exhaustion and that was the time he ought to have raised territorial jurisdiction.

### **Determination**

23. The jurisdiction of the High Court flows from the Constitution. Article 165(3) grants the High Court unlimited original jurisdiction in civil and criminal matters. That constitutional grant is the starting point and, as several courts have held, must inform

how statutes that appear to limit venue / place of institution are applied.

24. Article 159(2)(d) directs courts to administer justice without undue regard to procedural technicalities; Article 48 guarantees access to justice. Those provisions both operate as interpretive lenses for procedural rules that might otherwise obstruct hearing matters on the merits. They explain why courts have treated the High Court's stations as flexible rather than rigid territorial divisions. The presence of a High Court station in Kiambu does not *ipso facto* mean that this court lacks jurisdiction to try a matter simply because of the geographical convenience

25. I am persuaded by the finding in **Kanampiu & Another v Marithi [2025] KEHC 7699 (KLR)** where Nyaga J held as follows: -

***“22. In my view, while the said section provides a guide on the place of filing suit, it is applicable to courts whose territorial jurisdiction is defined and cannot override the Constitutional provisions regarding the jurisdiction of the High Court.***

***23. In Selina Vukinu Ambe Vs Ketan Shashikant Khatri (2020) eKLR the court held as follows as regards any limits to its jurisdiction under the Civil Procedure Act. “The High Court’s jurisdiction being a creature of the constitution which is the supreme law of the land cannot be limited or fettered by any other written law including the Civil Procedure Act. In my view, any statute that would purport to limit the High Court’s jurisdiction as***

***conferred by Article 165 (3) would to that extent be unconstitutional by virtue of Article 2 (4) of the Constitution.”***

***24.It is my further view that Section 15 of the Act is not meant to oust the jurisdiction of this court. It is there to ensure that a Defendant is not burdened by litigating in a distant and inconvenient forum, and to facilitate the expedient and affordable resolution of matters. This was so held in Kassam and Another Vs Pearl Beach Hotels T/A English Point Maliva (Supra) where it was held; “The overriding objective of the Act and the Rules is to facilitate the just, expeditious, proportionate and or affordable resolution of civil disputes governed by the Act. In furtherance of this objective the courts are mandated to ensure***

***the just determination of proceedings, efficient disposal of the business of the court, the efficient use of available judicial and administrative resources and timely disposal of proceedings at a cost affordable to the respective parties.”***

26. The defamation suit rests on posts allegedly that were made on Facebook which makes the place from where the posts were made moot. The alleged information would also reach a larger audience outside Kiambu County. Consequently, the nature of the suit would traverse multiple geographical jurisdictions and it would be impossible to localize it to a specific territorial jurisdiction.

27. It is my finding that the Applicant has not laid before this court any substantive reason why the suit cannot proceed before this court.

28. The Application lacks merit and is dismissed.

29. Costs will abide the outcome of the suit.

Orders accordingly.

**Ruling delivered, dated and signed at Chuka this  
26<sup>th</sup> day of November, 2025.**

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**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of ..... for  
the Applicant; and .....for the Respondent.**

**Muriuki (Court Assistant).**