

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
MISC. CIVIL APPLICATION NO. E875 OF 2025

DOROTHY MUTETE MWANGANGI & BENJAMIN WEYAMA
(Suing as administrators of the estate of BRIAN WEYAMA)
.....**APPLICANTS**

-VERSUS-

ERASTUS CHIURI RIRI.....1ST
RESPONDENT
JOSEPH KAMAU MIRE.....2ND
RESPONDENT

RULING

The Notice of Motion

1. **Dorothy Mutete Mwangangi & Benjamin Weyama**
(hereafter the 1st and 2nd Applicants) have filed the Notice of Motion dated 26th May 2025 (the Application). They have supported that application with the grounds laid out on the face of it and in the Supporting Affidavit sworn by the 1st Applicant on the 26th May 2025.

2. The Application seeks the following orders:

1) Spent.

2) THAT this Honourable Court be pleased to transfer Nairobi CMCC No. 1059 of 2019: DOROTHY MUTETE MWANGANGI & BENJAMIN WEYAMA (Suing as administrators of the estate of BRIAN WEYAMA) V ERASTUS CHIURI RIRI & JOSEPH KAMAU MIRE) to Wang'uru Law Courts, pursuant to the ruling dated 24.04.2025 by Hon. William Lopoloiyit in Nairobi CMCC No. 1059 of 2019: DOROTHY MUTETE MWANGANGI & BENJAMIN WEYAMA (Suing as administrators of the estate of BRIAN WEYAMA) V ERASTUS CHIURI RIRI & JOSEPH KAMAU MIRE).

3) THAT each party bear its own costs.

3. The Motion is brought under Section 18 of the Civil Procedure Act (CPA) and Order 51, Rule 1 of the Civil Procedure Rules (CPR).

4. In her supporting affidavit, the 1st Applicant has stated that she and the 2nd Applicant instituted **Nairobi CMCC No. 1059**

of 2019: DOROTHY MUTETE MWANGANGI & BENJAMIN WEYAMA (Suing as administrators of the estate of BRIAN WEYAMA) V ERASTUS CHIURI RIRI & JOSEPH KAMAU MIRE) (the suit) seeking damages against **Erastus Chiuri Riri** and **Joseph Kamau Mire** (hereafter the 1st and 2nd Respondents) arising from a road traffic accident which occurred along the Makutano-Mwea Road as a result of which **Brian Weyama** (hereafter the deceased) died. That soon thereafter, the 1st Respondent lodged a preliminary objection challenging the territorial jurisdiction of the subordinate court to entertain the suit, for the reason that the said Respondent resides in Mwea. That upon consideration thereof, the learned Magistrate, Hon. William Lopokoiyit vide a ruling delivered on 30th April 2025, allowed the preliminary objection and directed that the suit be transferred to the appropriate court having territorial jurisdiction within the locality of the 1st Respondent's residency.

5. It is the 1st Applicant's averment that, her advocates wrote to the court registry requesting for facilitation of transfer of the

court file pertaining to the suit to Wang'uru Law Courts, being the court with territorial jurisdiction to entertain the same. That, the registry staff informed the Applicants' advocates that a transfer thereof can only be effected by way of an order emanating from the High Court, thereby necessitating the instant Motion and that in the premises, it is in the interest of justice that the orders sought in the Motion be granted.

The Preliminary Objection

6. The 1st Respondent filed a Notice of Preliminary Objection (PO) dated 16th June 2025 challenging competency of this application on the following grounds:

- (i) ***The High Court lacks jurisdiction to transfer a suit which was filed in a subordinate court without jurisdiction under Section 17 of the Civil Procedure Act.***
- (ii) ***A suit filed in a court without jurisdiction can only be withdrawn.***

Parties' Submissions

7. Pursuant to the directions given by this court on 21st October 2025, the Application and PO were canvassed together by way of written submissions. In support of the PO, the 1st Respondent submitted that given that the subordinate court had earlier determined that it lacked jurisdiction to entertain the suit, the High Court has no jurisdiction to make an order for transfer of the suit to the competent court.
8. The 1st Respondent relied on the case of **David Korir v Samuel Kipkoskei Chepkwony & another (Environment and Land Appeal 8 of 2022) [2023] KEELC 21671 (KLR) (23 November 2023) (Ruling)** in which the court determined that the High Court lacked jurisdiction to make an order for transfer of an appeal instituted before it, to the Environment and Land Court, pursuant to Sections 17 and 18 of the CPA.
9. The 1st Respondent has submitted that the Applicant's only recourse in the circumstances is to withdraw the suit and file a

fresh suit before the competent court. For those reasons, the 1st Respondent urged court to allow the PO.

10. In urging the court to dismiss the PO and to consequently allow the Application as prayed, the Applicants have argued that while it is not disputed that the Chief Magistrate's Court in Nairobi lacks territorial jurisdiction to entertain the suit, the said suit nonetheless falls within the pecuniary jurisdiction of the magistrates' courts and hence this court has jurisdiction to entertain the instant application, pursuant to Section 18 of the CPA.

11. The Applicants have argued that the facts in the case of **David Korir v Samuel Kipkoskei Chepkwony & another**, cited above, are distinguishable from the facts in this matter and cannot therefore apply to the present circumstances.

12. It is the Applicants' collective submission that the High Court has on previous occasions made an order transferring matters instituted in courts lacking territorial jurisdiction. On this point, the Applicants have cited various judicial authorities, including the decision in **Kirui (Suing as the Chairman of**

Kessir Youth Bunge Self-Help Group) v Kecha Sammy Matonyi t/a Kibochi Ventures [2023] KEHC 20720 (KLR)

where the court allowed an application seeking to transfer a suit from a subordinate court with pecuniary jurisdiction but lacking the requisite territorial jurisdiction, to a subordinate court with territorial jurisdiction. The Applicants have likewise cited the decision in **Malombo v Kibumba [2025] KEHC 4557 (KLR)** in which the High Court in exercising its power under Section 18 of the CPA, allowed a similar application.

13. The Applicants are equally of the view that the Respondents herein do not stand to suffer any prejudice if the order for transfer sought is granted, since they will have an opportunity to defend the claim. That in contrast, if the order for transfer sought is denied, the Applicants will not only be denied a chance to prosecute their claim but they will also be forced to withdraw the claim, thereby causing it to be overtaken by the statute of limitations at the point of filing afresh. That in the

premises, it is essential that the Application be allowed as prayed.

14. As can be discerned from the record, the 2nd Respondent did not enter appearance in the matter and did not participate in the present proceedings.

Determination

15. The determination of the PO first will open the way for the determination of the application for the PO questions the jurisdiction of this court to grant the orders sought in the Application.

16. I have read and considered the Application and the grounds in support of the same. I have considered the PO raised in opposition to the Application as well as the parties' submissions and the authorities relied on.

17. I need not re-invent the wheel because what constitutes a PO has been settled in this country. A PO is well defined in cases such as **Mukisa Biscuit Company v West End Distributors Limited (1969) EA 696** and **Independent Electoral &**

**Boundaries Commission v Jane Cheperenger & 2 others
[2015] eKLR.**

18. The instant PO, raised by the 1st Respondent, is challenging the jurisdiction of this court to entertain the instant Application. It trite that jurisdiction is everything and that without it, a court cannot perform any further action in a matter before it. This position was reaffirmed by the Court of Appeal in **Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR** when it held thus:

“Jurisdiction is primordial in every suit. It has to be there when the suit is filed in the first place. If a suit is filed without jurisdiction, the only remedy is to withdraw it and file a complaint one in the court seized of jurisdiction. A suit filed devoid of jurisdiction is dead on arrival and cannot be remedied. Without jurisdiction, the Court cannot confer jurisdiction to itself. The subordinate court could not therefore entertain the suit and allow only that part of the claim that was within its pecuniary jurisdiction. In another locus classicus in this subject, this Court

pronounced; Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd. (1989):

“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 its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.....”

19. Section 17 of the CPA provides that:

Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court; and the High Court after considering the objections, if any, shall determine

in which of the several courts having jurisdiction the suit shall proceed.

20. **Section 18** of the same Act makes provision for the withdrawal and transfer of suits by the High Court, and reads 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 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.

21. The above provisions clearly empower this court to withdraw and transfer suits in the manner stipulated thereunder.

22. In the present case, I find no dispute that the suit was filed at the Chief Magistrate's Court situated in Milimani Commercial Courts, vide a plaint dated 18th February 2019 as seen in **Annexure "DMM-1"** in the 1st Applicant's Supporting Affidavit. It is also not disputed that, the 1st Respondent filed a preliminary objection dated 2nd February 2024 (**Annexure "DMM-2"**) challenging the territorial jurisdiction of the subordinate court to entertain the suit, which objection succeeded upon the subordinate court's determination that the 1st Respondent resides in Kirinyaga County and that, the cause of action being the accident in question, arose in the

said County. By ruling delivered on 24th April 2025 (**Annexure “DMM-3”**), the learned Magistrate held that the suit had been improperly filed at the Milimani Commercial Courts and ordered that the same be transferred to the competent court.

23. Both subordinate courts in Milimani and in Kirinyaga County are clothed with the pecuniary jurisdiction to entertain the suit herein. However, there is the issue of the territorial jurisdiction of the Milimani court to entertain the suit, which I believe is what led to the transfer of the matter by the magistrate in Milimani.

24. It is clear from the provisions of **Section 18** of the **CPA** that this Court is empowered to withdraw and transfer suits from one subordinate court to another subordinate court having competent jurisdiction, as the case may be. The distinction of the **‘territorial jurisdiction’** and **‘pecuniary’** jurisdiction ought to be made. In drawing that distinction, I am guided by **Gitere v Salene Credit Limited & another [2025] KEHC 11764 (KLR)** where it was stated that:

“It is manifest that what is in issue here is the question of ‘territorial jurisdiction’ which relates to the ‘location’ of the court in which the suit ought to be filed. ‘Territorial jurisdiction’ is distinguishable from ‘pecuniary jurisdiction’. The former is more of an administrative function to ensure that courts are not clogged with suits which ought to have been filed in a court in a different geographical location. Pecuniary jurisdiction relates to the competency of a court to entertain a particular matter.”

25. It is my considered view that both lower courts in Milimani and in Kirinyaga County are clothed with pecuniary jurisdiction to determine this matter save for the territorial jurisdiction.

26. Moreover, this Court has, in the exercise of its powers under **Sections 17 and 18 CPA**, on several occasions, withdrawn and transferred suits from one subordinate court to another, including the decisions of **Kirui (Suing as the Chairman of Kessir Youth Bunge Self-Help Group) v Kecha Sammy Matonyi t/a Kibochi Ventures [2023] KEHC 20720 (KLR)**

and **Malombo v Kibumba [2025] KEHC 4557 (KLR)** cited in the Applicants' submissions.

27. I wish to distinguish the case **David Korir v Samuel Kipkoskei Chepkwony & another (Environment and Land Appeal 8 of 2022) [2023] KEELC 21671 (KLR) (23 November 2023) (Ruling)** relied upon by the 1st Respondent, in that in that case, it was deemed that the High Court lacked jurisdiction to make an order for transfer of an appeal instituted before it to the Environment and Land Court, since the claim in question was in the nature of a dispute pertaining to land and which would therefore fall purely within the jurisdiction of the ELC by dint of Article 162(2)(b) of the Constitution of Kenya, 2010 and Section 13 of the ELC Act.

28. What is being challenged in this case is different. Both courts in Milimani and Kirinyage County have pecuniary jurisdiction to hear and determine this matter. The only issue is that pertaining to territorial jurisdiction.

29. Consequently, it is my considered view that the PO cannot be sustained.

30. Turning to the merits of the application under determination, I have considered that the substantive order sought in the instant application is for transfer of the suit to Wang'uru Law Courts, pursuant to the ruling delivered on 24th April 2025 by Hon. William Lopoloiyit. As stated in this Ruling, **Section 18** CPA empowers this court to withdraw and transfer suits from one subordinate court to another. This position was reaffirmed by the court in the case of **David Kabungu v Zikarenga and 4 others - Kampala HCCS No. 36 of the 1995** where the court reasoned thus:

“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 motto by the Court without 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 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 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 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 from which transfer is sought has no jurisdiction to try the case transfer would be refused."

31. The onus is on the Applicant to demonstrate to the court the reasons necessitating the application for the transfer. The primary reason for seeking the transfer in the instant

application is that the 1st Respondent resides in Kirinyaga County and that the cause of action arose in the said County. This averment has not been controverted by the 1st Respondent and was confirmed by the subordinate court vide the ruling delivered on 24th April 2025.

32. Indeed, **Section 15** of the **CPA** stipulates that a suit ought to be instituted where the defendant resides or carries on his or her business or works for gain, or where the cause of action arose.

33. My reading of the pleadings reveals that the court with territorial jurisdiction to entertain the suit has been identified as Wang'uru Law Courts. I have considered the argument by the Applicants that if the order sought for the transfer is denied, they may be forced to file a fresh suit before the appropriate court, which suit will have been overtaken by the limitation period. I am persuaded that the Applicants have reasonably demonstrated the manner in which they would be prejudiced. Further, I have not come across any cogent material to demonstrate the prejudice, if any which would

befall the Respondents if the order sought for the transfer is granted.

34. I am also mindful of the overriding objective under **Section 1A** of the CPA, ***“to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act”***.

35. Consequently, I decline to allow the PO and do hereby allow the Application in the following terms:

- a) The Notice of Preliminary Objection is hereby dismissed.***
- b) The Notice Motion dated 26th May 2025 is hereby allowed, with the consequence that Nairobi CMCC 1059 of 2019: Dorothy Mutete Mwangangi & Benjamin Weyama (Suing as administrators of the estate of Brian Weyama) v. Erastus Chiuri Riri & Josephine Kamau Mire) is hereby withdrawn and transferred to Wang’uru Law Courts for hearing and disposal.***
- c) Each party shall bear costs of both the PO and the Notice of Motion.***

36.Orders shall issue accordingly.

Dated, signed and delivered on 16th December 2025.

**S. N. MUTUKU
JUDGE**

In the presence of:

1. Mr. Nderitu for the Plaintiffs/Applicants
2. Ms Naliaka holding brief for Mr. Kiama for the
Defendants/Respondents