



REPUBLIC OF KENYA



**KENYA LAW**  
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**Auma v Gyto Success Company Ltd (Miscellaneous Application  
E069 of 2025) [2026] KEELRC 203 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 203 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
MISCELLANEOUS APPLICATION E069 OF 2025**

**NZIOKI WA MAKAU, J**

**JANUARY 29, 2026**

**IN THE MATTER OF THE EMPLOYMENT AND  
LABOUR RELATIONS COURT ACT NO. 20 OF 2011**

**AND**

**IN THE MATTER OF THE CIVIL PROCEDURE ACT  
(CAP 21) AND THE CIVIL PROCEDURE RULES 2010**

**AND**

**IN THE MATTER OF CMCELRC NO. E002 OF 2025 AT  
THE CHIEF MAGISTRATE'S COURT AT HOMA BAY**

**BETWEEN**

**VIVIAN AUMA ..... APPLICANT**

**AND**

**GYTO SUCCESS COMPANY LTD ..... RESPONDENT**

**RULING**

1. Before Court is the Applicant's Notice of Motion dated 6<sup>th</sup> October 2025, by which she seeks to transfer Homa Bay CMELRC No. E002 of 2025, Vivian Auma v Gyto Success Company Ltd, from Homa Bay Law Courts to the Chief Magistrate's Court at Kendu Bay. She also seeks such further orders as the Court may deem fit, together with costs of the application.
2. The application is premised on the grounds on its face together with a supporting affidavit sworn by the Applicant. The Applicant deposes that she is the Claimant in Homa Bay CMELRC No. E002 of 2025 and that the Chief Magistrate at Homa Bay has recused herself from the matter on account of their close acquaintance. She contends that, in view of their prior personal interaction, there exists a



likelihood of bias and conflict of interest. On that basis, she invokes her right to a fair hearing before an impartial court under Article 50(1) of *the Constitution*, as well as section 18 of the *Civil Procedure Act*, which empowers this Court to transfer proceedings from one subordinate court to another.

3. In further support of the application, the Applicant asserts that her familiarity extends to other magistrates stationed at Homa Bay, having worked there for a considerable period of time. She urges that, in the interest of justice, the matter be transferred to the Kendu Bay Law Courts, which she contends has competent jurisdiction to hear and determine the dispute.
4. In response to the application the Respondent filed a replying affidavit sworn by Zipporah Mageto it's Human Resource Manager. She depones that the Applicant has not provided any cogent reason for preferring the Kendu Bay Law Courts. She further avers that the Applicant has neither pleaded nor demonstrated that she resides or works in Kendu Bay. It is the Respondent's position that, notwithstanding the fact that it is based in Nairobi, the Claimant did not seek a transfer of the suit to the Milimani Law Courts, which also has the requisite jurisdiction. Consequently, the Respondent contends that the unexplained choice of Kendu Bay, as opposed to Milimani, amounts to forum shopping.
5. In rejoinder, the Applicant filed a supplementary affidavit sworn on 15<sup>th</sup> November 2025. In that affidavit, she addressed matters touching on the merits of the substantive claim, rather than the issue of transfer of the suit.
6. The application was canvassed by way of written submissions.

### **Applicant's Submissions**

7. In her submissions, the Applicant reiterated this Court's power under section 18(1)(b) of the *Civil Procedure Act* to withdraw a suit from a subordinate court and transfer it to another subordinate court competent to hear and determine it. She urged the Court to be guided by *Equity Bank Ltd v Bruce Mutie Mutuku t/a Diani Tour & Travel [2016] eKLR*, which underscored that transfer is appropriate where it prevents the likelihood of prejudice, enhances convenience, and upholds the integrity of judicial proceedings. On the question of prejudice, the Applicant submitted that the Respondent would suffer none if the matter is transferred to Kendu Bay, as the Respondent operates within courts across the Nyanza region.
8. The Applicant further submitted that the recusal of the Chief Magistrate at Homa Bay on account of conflict of interest was not disputed by the Respondent. She relied on *Republic v Mwalulu & 8 others [2004] eKLR* for the proposition that the appearance of bias is sufficient to vitiate proceedings, even in the absence of proof of actual bias. She maintained that her right to a fair hearing before an impartial court under Article 50(1) of *the Constitution* cannot be overridden by the Respondent's procedural objections. With regard to the suitability of Kendu Bay Law Courts, the Applicant submitted that it is a neutral forum, free from the circumstances that necessitated the recusal at Homa Bay, and that it lies within the same administrative region, thereby occasioning no inconvenience to the parties. She relied on the case of *David Kabungu v Zikarenga (1996) HCB 60*, which emphasized that a suit ought to be transferred to a forum where it can be tried most fairly and justly.
9. In the premises, the Applicant urged the Court to allow the application as prayed.

### **Respondent's Submissions**

10. In its submissions, the Respondent opposed the application on the ground that the Homa Bay Magistrate's Court lacked jurisdiction over the suit. It further asserted that the Applicant neither



resides nor works in Kendu Bay and that the cause of action did not arise there. On the question of jurisdiction, the Respondent submitted that the Claimant sought reliefs founded on alleged continuing injuries which, in its view, are barred by section 90 of the *Employment Act*. The Respondent consequently submitted that, since the suit is incompetent for want of jurisdiction, it is not amenable to transfer. In that regard, reliance was placed on *Wamathu Gichoya v Mary Wainoi Magu* [2015] eKLR, which underscored that a court lacks jurisdiction to transfer an incompetent suit. Further reliance was placed on *Biwott & another v Amin; Tanui (Interested Party)* (2025) KEELC 3391 (KLR), which held that a court can only transfer a suit that was properly instituted before a court clothed with jurisdiction in the first instance. The Respondent also invoked Rule 6(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024, which limits the place of filing to the locality where the claimant resides, carries on business, or works for gain, or where the cause of action wholly or in part arose. In conclusion the Respondent urged the court to dismiss the application with costs.

### **Disposition**

11. The issue the Court distils for determination is simply whether the Court can transfer the suit to Kendu Bay Law Courts for hearing and determination. The Court has been asked to determine a question on jurisdiction of the Court before whom the dispute was filed. I decline to determine whether the suit is competently before the Court at Homa Bay as this is not an appeal. The sole determining factor is the provenance of a transfer. In the case of *Equity Bank Ltd v Bruce Mutie Mutuku t/a Diani Tour & Travel* [2016] eKLR, the Court underscored that a transfer is appropriate where it prevents the likelihood of prejudice, enhances convenience, and upholds the integrity of judicial proceedings. In this case, the Applicant is known to the Magistrate who has jurisdiction to hear the claim and on that score, it would be inapt for the matter to continue at Homa Bay Law Court. I hereby transfer the case Homa Bay CMELRC No. E002 of 2025, *Vivian Auma v Gyto Success Company Ltd* to Kendu Bay Law Courts for hearing and determination. Costs will abide the determination of the Kendu Bay Law Courts.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 29<sup>TH</sup> DAY OF JANUARY 2026**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

