

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. E199 OF 2023

SAMUEL NGANGA MWANGI.....
PLAINTIFF/APPLICANT

-VERSUS-

JOYCE WAIRIMU WANJOHI.....1ST
DEFENDANT
NCBA BANK KENYA PLC.....2ND
DEFENDANT/RESPONDENT

RULING

The Notice of Motion

1. **Samuel Nganga Mwangi** (hereafter the Plaintiff/Applicant) has brought this Notice of Motion dated 2.09.2025 (the Motion) supported by the grounds laid out on its face and in the Supporting Affidavit, seeking a review and/or setting aside of the order made by the court on 5.12.2023 directing that the suit be transferred to the Chief Magistrate's Court for hearing and determination; and further order that CMCC No. 002 of 2024 [Formerly HCCC No. E199 of 2023 - Samuel Nganga Mwangi v Joyce Wairimu Wanjohi & Another] be withdrawn

and transferred to the High Court for hearing and determination and costs of the application.

2. The grounds in support of the Motion, in sum, are that there is an error apparent on the face of the record since the suit was purportedly transferred by the court to the Chief Magistrate's Court *suo motu* and without notification to the parties. That furthermore, the value of the subject matter to the dispute exceeds the pecuniary jurisdiction of the Chief Magistrate's Court and hence there is sufficient reason to warrant a review of the order in question.
3. In his supporting affidavit, the Plaintiff/Applicant has stated that at the onset, he instituted the present suit vide a plaint dated 12.9.2023, seeking various reliefs against **Joyce Wairimu Wanjohi** (hereafter the 1st Defendant) and **NCBA Bank Kenya PLC** (hereafter the 2nd Defendant/Respondent). That sometime thereafter, the court made an order *suo motu*, transferring the suit to the Chief Magistrates' Court situated at Nairobi. That there is an error apparent on the face of the record and sufficient reason to have the transfer order reviewed and set aside, since the value of the subject matter

to the dispute herein is over Kshs. 26,000,000/- and therefore, it exceeds the jurisdiction of the Chief Magistrate's Court.

4. The Plaintiff/Applicant has further stated that upon transfer of the suit, the respective Defendants entered appearance and filed their statements of defence separately, with the 2nd Defendant/Respondent objecting to the jurisdiction of the subordinate court to entertain the matter, in its statement of defence. That as a result, the subordinate court has since suspended the proceedings pending hearing and determination of the instant Motion.
5. It is also the Plaintiff's/Applicant's averment that he is desirous of amending the plaint to include additional claims against the 1st Defendant which will exceed the pecuniary jurisdiction of the subordinate court.

Grounds of Opposition

6. The 2nd Defendant/Respondent has opposed the Motion by filing the Grounds of Opposition dated 28.10.2025 featuring the following grounds:

- (i) THAT the Application is incompetent and an abuse of the Court process and should be dismissed.**
- (ii) THAT contrary to the averments by the Plaintiff, the dispute herein arose from the asset finance facilities advanced to the 1st Defendant for the purchase of motor vehicles valued at Kshs. 17,161,000/-.**
- (iii) THAT the Honourable Court exercised its administrative power properly and transferred the suit to the Chief Magistrate's Court which is clothed with the pecuniary jurisdiction to hear and determine the dispute between the parties.**
- (iv) THAT the application should be dismissed as it is misguided and accordingly an abuse of the Court process.**

7. The 2nd Defendant/Respondent prays that the Plaintiff's/Applicant's Application dated 2.09.2025 be struck out *in limine* with costs to the 2nd Defendant.

Oral Arguments

8. The Motion was canvassed through oral arguments. On the one part, **Mr. Kiplagat**, learned counsel for the Plaintiff/Applicant, placed reliance on the grounds featured in the Motion and the facts stated in the supporting affidavit thereto. Counsel argued that the claim against the 1st Defendant is founded on a breach of trust and fiduciary duty in respect of motor vehicles held in trust for the Plaintiff/Applicant at all material times, while the second claim is founded on a breach of trust and fraud relating to the said motor vehicles. That the value of the subject matter exceeds the pecuniary jurisdiction of the Chief Magistrate's Court.
9. Counsel also argued that there is an error apparent on the face of the record, being that the order made on 5.12.2023 was made by the court *suo motu*. It is counsel's submission that the error in question is self-evident and therefore ought to be corrected and consequently, that the court ought to grant the orders sought on that basis.
10. **Miss Nkatha**, learned counsel for the 2nd Defendant/Respondent, in response, reiterated the Grounds of Opposition to the effect that the dispute does not concern the

value of the motor vehicles in question and added that in any event, the same was valued at Kshs. 17,000,000/- at the material time and cannot have appreciated in value over the years.

11. Counsel contended that no draft amended plaint has been availed before this court to support the Plaintiff's/Applicant's averments of his intention to amend the plaint.; that the issue of jurisdiction which was previously raised in the 2nd Defendant's/Respondent's statement of defence in no way relates to pecuniary jurisdiction and that the matter was properly transferred to the Chief Magistrate's Court and hence the Motion ought to be dismissed accordingly.

12. On her part, the 1st Defendant indicated through her advocate on record, that she would not be opposing the Motion.

Analysis and Determination

13. I have considered the Motion and the grounds supporting it. I have considered the Grounds of Opposition and the rival oral arguments. The orders sought in the instant Motion are the

review and/or setting aside of the order made by this court (**Meoli, J.**) on 5.12.2023 directing that the suit be transferred to the Chief Magistrate's Court for hearing and determination and for withdrawal and retransfer of the matter to the High Court.

14. The germane principles guiding this court in deciding whether to review the abovementioned order are found under section 80 of the Civil Procedure Act, Cap. 21 Laws of Kenya and **Order 45** of the **CPR** as follows:

“Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or

order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

15. The following are the instances in which a court can review a decision already in place:

a) the discovery of new and important matter or evidence, or

b) some mistake or error apparent on the face of the record, or

c) any other sufficient reason.

16. From my reading and understanding of the Motion and supporting documents, it is clear that the Motion rides on the principles of **‘error apparent on the face of the record’** and **‘sufficient reason.’**

17. Relating to the principle of **‘mistake or error apparent on the face of the record’** reference is made to the case of **Muyodi v Industrial and Commercial Development Corporation & Anor [2006] 1 EA 243** where the Court of Appeal rendered itself in the following manner:

“In Nyamogo and Nyamogo v Kogo [2001] EA 174 this court said that an error apparent on the face

of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us.”

18. From the foregoing, it is clear that an error apparent on the face of the record must be self-evident and need not require elaborate arguments to support it.

19. From my consideration of the Plaintiff's/Applicant's averment to the effect that apparent error is that the transfer order was issued *suo motu* and without notice to the parties, I am not persuaded that this would constitute an error or mistake apparent on the face of the record, within the definition set out above and which would warrant a review of the aforementioned order.

20. Besides, this court has powers to act *suo moto* and without notice to the parties and transfer a matter before it to a subordinate court with jurisdiction to try it under Section 18(1) of the Civil Procedure Act, Cap. 21 Laws of Kenya, which provides thus:

(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 (emphasis added).

21. A court acting on the strength of this provision cannot be said to have committed an error on the face of the record by making an order for the transfer.

22. On the principle of '**sufficient reason**', I have considered the Plaintiff's/Applicant's assertions that the value of the subject matter exceeds the pecuniary jurisdiction of the subordinate court. I have read the plaint annexed to the instant Motion and marked as Annexure "**SNM1**". It is apparent that the claim is founded on a breach of trust, fiduciary duty and fraud. The reliefs sought therein include a permanent injunction pertaining to the motor vehicles registration numbers KCG 381F, KCH 818T and KCK 317K; a declaration; an order for payment of the value of the listed motor vehicles; general, exemplary and punitive damages; amongst others. I find no cogent evidence to support the averments by the Plaintiff/Applicant that the subject matter of the dispute or the

reliefs sought therein would exceed the pecuniary jurisdiction of the Chief Magistrate's Court.

23. Further, while the Plaintiff/Applicant has mentioned a draft amended plaint in the instant Motion, he neither annexed a copy thereof to the Motion nor availed the same for reference. In my considered view therefore, there is no sufficient reasons provided to warrant intervention of this court in granting a review of the order made on 5.12.2023.

24. Consequently, I find the Notice of Motion dated 2nd September 2025 not merited. In exercise of my discretion, I hereby dismiss the instant Notice of Motion and direct that each party bears own costs.

25. It is so ordered.

Dated, signed and delivered this 26th day of January 2026.

**S. N. MUTUKU
JUDGE**

In the presence of:

1. Mr. Kiplagat for the Applicant
2. Ms Nkathat for the 2nd Respondent

3. N/A for the 1st Respondent

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