



**Almasi Bottlers Limited v Aoko & another (Miscellaneous Application
E222 of 2024) [2026] KEHC 1117 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1117 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION E222 OF 2024
RN NYAKUNDI, J
FEBRUARY 5, 2026**

BETWEEN

ALMASI BOTTLERS LIMITED APPLICANT

AND

EDNA AOKO 1ST RESPONDENT

MARSIENA DISTRIBUTOR 2ND RESPONDENT

RULING

1. Before Court is a notice of motion dated 16th August 2024 expressed to have been brought under Article 48 and 50 (1) and 165(3) (a) of *the Constitution* of Kenya, Sections 1A, 1B, 3A, 12, 15 and 63 (e) of *Civil Procedure Act*, Order 51 of the Civil Procedure Rules and all other enabling provisions of the law. The application is seeking for the following orders:
 - a. That this Honourable Court be pleased to order the transfer of Eldoret CMCC Case NO. E114 of 2023 Almasi Bottlers Limited Vs Edna Aoko and Marsiena Distributor from this Honourable Court to the Chief Magistrates Court in Migori for final hearing and determination.
 - b. That costs of this application be provided for.
2. Which application is based on the following grounds:
 - a. The suit as filed and presented raised an issue of territorial jurisdiction and should be transferred to the Chief Magistrates Court at Migori.
 - b. The cause of action arose in Sare-Awendo, within Migori County and therefore under Section 12 of the *Civil Procedure Act* this should have been filed in Migori where the cause of action arose.



- c. The Defendants reside and work for gain in Sare-Awendo within Migori County, where the cause of action arose and therefore under Section 15 of the Civil Procedure Act this suit should have been filed where the defendants reside and where the cause of action arose.
 - d. It was therefore an inadvertent mistake/ error that the suit was filed in Eldoret instead of Migori County.
 - e. That ever since the filing of the suit the matter has not been heard and conclusively determined.
 - f. The Court has unfettered jurisdiction to transfer cases in the interest of justice.
 - g. The application has been brought before this court promptly and without undue delay.
 - h. The Defendants will not suffer any prejudice if the Application is allowed.
 - i. That it is in the interest of justice that this application be allowed.
3. The application is supported by an affidavit sworn by Francis Rop who deponed as follows:
- a. I am the Regional Credit Manager of the Applicant herein hence competent and authorized to swear this affidavit.
 - b. That I am well versed with the facts of this case as they appear in the Applicant's records and I am enabled to swear this Supporting Affidavit out of information within my knowledge as well as information derived from records within the Applicant's custody.
 - c. That I confirm that the Applicant lodged a plaint and supporting documents as against the Respondents herein claiming for Principal sum of Kshs 2,540,641/= plus special damages, general damages and costs of the suit as a result of breach of contract.
 - d. That I am aware that the cause of action arose in Sare-Awendo within Migori County and the Defendants reside and work for gain within Sare-Awendo within Migori County.
 - e. That I am advised by my advocates on record, Messrs Kalya & Company Advocates, which advise I verily believe to be true that the mandatory provisions of Section 12 of the Civil Procedure Act notes:-Subject to the pecuniary or other limitations prescribed by any law, suits-
 - i. For the recovery of immovable property, with or without rent or profits;
 - ii. For the partition of immovable property;
 - iii. For the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
 - iv. For the determination of any other right to or interest in immovable property;
 - v. For compensation for wrong to immovable property;
 - vi. For the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate: provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose



jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.

- f. That I confirm the suit was therefore filed in Eldoret erroneously and inadvertently hence the need to have the same transferred to Migori Law courts for it to be determined on its merits.
- g. That I am further advised by my Advocates on record and verily believe the same to be true that this Honorable Court has unfettered jurisdiction and power to transfer proceedings from one Court to another as a corrective measure to ensure proceedings wherever began or whatever forum the Applicant has initially chosen should be dealt with or heard or determined by the Court most appropriate or suitable for those proceedings.
- h. That I confirm it is in the interest of the litigants and the more convenient administration of justice to transfer the matter to the Chief Magistrate's Court at Migori where the cause of action arose and the Defendants herein work for gain and reside.
- i. That I confirm from the foregoing and in view of the above, I am apprehensive that unless the prayers sought herein are granted and the application allowed. The Applicant is likely to be prejudiced and it stands to suffer irreparable loss, damage and substantial loss as the Respondents have raised a preliminary objection at the subordinate court on the issue of jurisdiction.
- j. That this application has been made in utmost good faith and without undue and inordinate delay.
- k. That the Respondents will not suffer any prejudice and it is in the interest of justice and fairness that the orders sought in this Application are granted and the case be determined on its merits in the interest of substantive justice.
- l. That I swear this affidavit in support of the application filed herewith.
- m. That what is deposed to hereinabove is true to the best of my knowledge, information and belief save wherein sources and full particulars whereof have been disclosed

Decision

4. The High Court is vested with jurisdiction under Section 1A, 1B, 3, 3A and 18(1) (b) of the [Civil Procedure Act](#) to transfer an already registered case before one subordinate court to another for purposes of adjudication and resolution of the dispute within the ambit of Article 50(1) of [the Constitution](#).
5. The Courts have been invited severally to interpret and construe Section 18(1) (b) of the [Civil Procedure Act](#) as illustrated in the case of David Kabungu v Zikarenga & 4 others Kampala HCCS No 36 of 1995 Okello, J stated as follows:

“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 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 or the suit has been filed in a particular court for the purpose of working injustice. What the court has to consider is whether the applicant has made out



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...Since the expense which the Plaintiff/applicant in this case is likely to incur in transporting and maintaining the numerous various senior public officers from Kampala to Kabale to attend and give evidence in court in this case is bound to be so prohibitive as to deny the applicants justice and the plaintiff/applicant has the right to choose his court, he should not be denied justice by forcing him to have his case heard in a court to which he would not by reason of expense produce his witnesses to prove his case”.

6. Similarly, the High Court of Kenya in *Rapid Kate Services Limited v Freight Forwarders Kenya Limited & 2 others* [2005] 1 KLR 292 it was observed as follows:

Whereas under Rule 5(2) of Order 46 the Court has a wide and flexible discretion to order that a case be tried in a particular place, that discretion may however be exercised upon cause being shown, and that cause shall have regard to the convenience of the parties, and of the witnesses, the date of when the trial shall take place, and the circumstances of the case. The Court’s power to transfer proceedings from one Court to another is a useful corrective to ensure that proceedings wherever began or whatever forum the plaintiff has initially chosen should be dealt with or heard or determined by the Court most appropriate or suitable for those proceedings. When making or refusing an order for transfer the Court will have regard to the nature 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. It is a discretionary power of the Court under section 3A of the *Civil Procedure Act*...Although there is only one High Court in Kenya which sits in different areas as directed by the Chief Justice (as opposed to subordinate courts established under various laws) it is not forbidden for a Kenyan High Court sitting in one location to order a transmission oral location of a case file before him to another judge sitting in another location. It must be a matter of discretion for the judge and it must be for compelling reasons which would be for the purposes of ensuring justice and this is all within the inherent power of the Court under section 3A of the *Civil Procedure Act*...Whereas there is no express provision in the *Civil Procedure Act* Cap 21 for transfer of cases from one High Court to another, it does not mean that in a proper case the Court cannot transfer a case before it to another registry of the High Court. The fact that there is no provision on the matter cannot prevent the High Court from deciding it, if by doing so, it will be able to deliver justice. In doing so the Court will employ its unlimited and inherent jurisdiction...There is no such express provision for intra-High Court transfer of cases from one civil registry to another. In addition to the Court’s inherent power under section 3A to make orders to meet the ends of justice, there are provisions of order 46 rule 5(2) which expressly empower the High Court to order that a case be tried in a particular place to be appointed by the Court. The language in this rule is deliberately guarded that the suit be “tried” not transferred” in a particular place appointed by the Court...This power is clearly unlike that under section 18 of the *Civil Procedure Act* where the High Court may



order the transfer of a case to a subordinate court or withdraw the case, try and dispose it itself or order on how such suit shall be disposed. The power of the High Court under order 46 rule 5(2) is to order for the place where the suit shall be tried and for that purpose achieve the horizontal movement of intra High Court cases from one registry to another. In this way, the High Court ensures that proceedings wherever began or whatever forum the plaintiff has initially chosen should be dealt with or heard or determined by the Court most appropriate or suitable for those proceedings. When making or refusing an order of transfer the Court will have regard to the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice. It is a discretionary power, which will be exercised having regard to all the circumstances of the case”.

7. In the affidavit before this Court the Applicant has deponed expressly that the cause of action arose in Sare-Awendo within Migori County. That further the defendants reside and work for gain in Sare-Awendo where the cause of action arose and therefore under Section 15 of the *Civil Procedure Act* this suit shall have been filed where the defendant reside and where the cause of action arose. This application brings into effect the provisions of Section 48 of *the Constitution* on access to justice. This conceptual framework of *the Constitution* focuses on geographic barriers and subject matter. In interpreting the letter and spirit of the Article it seems to emphasize the constitutional mandate that justice must not be delayed or inaccessible due to cost, distance or procedural technicalities. The guiding principles on access to justice include the following: Distance and Court Location: Research shows that 3.5% of Kenya's population lives more than 100km from a court, creating significant barriers for rural populations. Mobile Courts: To bridge the gap in rural areas, the judiciary has implemented mobile courts. Decisions in this area emphasize that physical proximity is a right, not a privilege. Alternative Dispute Resolution (ADR) as Geographic Solution: Alternative Justice Systems (AJS) Policy 2020 was launched to reduce case backlogs and bring justice to the community level (e.g., in rural areas). Spatial Proximity Analysis: Reports analyze that the 142 magistrate courts are not adequately distributed to serve the 290 Sub-Counties, leading to proposals for more regional courts.
8. The constitutional mandate under Article 48 of *the Constitution* envisages the components of access to justice in a legal system is one which people vindicate their rights or resolve their disputes under the general auspices of the State through the various forums created purposively to hear and determine a dispute. It is also a situation where the citizens in need of help have to find effective solutions within the justice system as contemplated in Article 159 of *the Constitution* that are accessible, affordable, comprehensible to ordinary people and which dispense justice fairly, speedily and without discrimination, fear or favour.
9. In light of the foregoing, there is merit in the application by the Applicant to have this case-docket transferred to the forum of conveniens which is the Chief Magistrate's Court at Migori. This alternative forum is more appropriate for adjudication of the cause of action which arose at Sare-Awendo in Migori County.

The doctrine of forum of conveniens would address the appropriate jurisdiction for a legal case even when multiple courts could potentially preside over it. This principle ensures the case is heard in the most suitable and convenient court for all parties involved.
10. As a consequence of the above, the other forum also constitutes availability of both territorial and subject matter or pecuniary jurisdiction to consider the dispute as pleaded in the supporting affidavit. This case file shall therefore be transferred from the Chief Magistrate's Court at Eldoret to the forum of conveniens at Migori Law Courts. With this in mind, the Deputy Registrar of the High Court shall remove this case file indexed as Misc. Application No. E222 of 2024 from Eldoret Civil Registry to



Migori Civil Registry to be placed before the Chief Magistrate for allocation to an appropriate court.
The status conference shall be held on 16th February 2026 at Migori Law Courts. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 5TH DAY OF FEBRUARY 2026

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R. NYAKUNDI

JUDGE

