



**Mucheru v Kirui (Civil Miscellaneous Application E053 of 2025)
[2026] KEHC 3237 (KLR) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CIVIL MISCELLANEOUS APPLICATION E053 OF 2025**

LN MUTENDE, J

MARCH 12, 2026

BETWEEN

MARGARET WAMBUI MUCHERU APPLICANT

AND

JULIUS KIRUI RESPONDENT

RULING

1. Through a Notice of Motion dated 16th September, 2025, the Applicant seeks orders as follows;
 1. That this honourable court be pleased to transfer Nyahururu Chief Magistrate’s Court Civil Case No. E176 of 2024 to the Magistrate’s Court at Maralal for hearing and determination.
 2. That the costs of this application be provided for.
2. The Application is premised on grounds that;
 - a. By a plaint dated 30th October, 2024, the Applicant herein filed Nyahururu CMCC No. E176 of 2024 seeking judgment against the Respondent herein for Kshs.468,500/- plus interest.
 - b. The cause of action arose in Maralal and the parties reside in Maralal, and the parties have agreed on the transfer of the matter to Maralal to mitigate on travelling costs.
 - c. It is in the interest of justice for the current application to be allowed to grant the parties herein an opportunity to be heard.
3. The application is supported by an affidavit deposed by Nderitu Komu, learned counsel representing the Applicant who deposes that through instructions by the Plaintiff(Applicant) he filed Nyahururu CMCC No. E176 of 2024 seeking judgment against the Respondent in the sum of Kshs.468,500/- and interest. That parties in the matter reside in Maralal where the cause of action arose. That to mitigate



on travelling costs for the parties and witnesses, parties have agreed that the matter be transferred to Maralal.

4. In a reply thereto, the Respondent through a replying affidavit dated 11th November, 2025, avers that he filed a Notice of Preliminary Objection dated 15th July, 2025, for hearing of the matter as the court lacked the requisite territorial jurisdiction as parties and their witnesses reside in Maralal.
5. That the Applicant conceded that the trial court lacked the requisite jurisdiction required to hear and determine the matter and on that account the court struck out the suit for lack of jurisdiction.
6. In a supplementary affidavit thereto, the Applicant's counsel avers that contrary to averments by the Respondent on 16th September, 2025, the court notified the parties that they had agreed to have the matter transferred to Maralal and the Plaintiff was to file a miscellaneous application in the High Court for transfer of the suit. That the lower court file is still active pending determination of the instant application.
7. Following supervisory orders bestowed upon me by statute I called for the lower court file with a view of examination and I found the last order made by the court which reads thus;

“This court has no jurisdiction to deal with the matter. The Plaintiff to file an application before the High Court to have the matter transferred to Maralal Law Courts.”

8. Section 18 of the *Civil Procedure Act* 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.
 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.
9. In the instant matter, on 16th September, 2025, the Applicant was ready to proceed and the Respondent was represented but the court expressed itself regarding lack of jurisdiction to deal with the matter. It was not struck out as alleged.
10. When the matter came up before this court, Mr. Okoyo learned counsel did not appear despite having been aware of the date as he had previously appeared on 13th November, 2025. This is a matter where the court can determine the application filed by parties or even act suo moto.



11. As admitted, parties herein with their witnesses reside in Maralal where the course of action arose. It follows that the case should have been instituted in Maralal Court which is competent to hear and determine it.
12. Therefore, it is in the interest of justice that the matter be transferred. For that reason, the matter herein be and is hereby transferred to Maralal Magistrate's Court for hearing and determination.
13. There will be no orders as to costs.
14. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF MARCH, 2026.

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L.N. MUTENDE

JUDGE

