



**Cheptumo t/a Chemco Contractors Co. Limited v Chelimo t/
a Albertos Lounge & Grill (Miscellaneous Civil Application
104 of 2025) [2026] KEHC 3710 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3710 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION 104 OF 2025**

**E OMINDE, J
MARCH 19, 2026**

BETWEEN

**ISAIAH CHEMELIL CHEPTUMO T/A CHEMCO CONTRACTORS CO.
LIMITED APPLICANT**

AND

**PAUL KIPKEMOI CHELIMO T/A ALBERTOS LOUNGE &
GRILL RESPONDENT**

RULING

1. By a Notice of Motion dated 15/05/2025, brought under Sections 1A, 1B, 3A and 18 (1) of the *Civil Procedure Act* Cap 21 Laws of Kenya, the Applicant seeks for the following orders:
 1. Spent.
 2. That the suit herein Eldoret MCCC No. E406 of 2023 be transferred to the Eldoret High Court for hearing and final determination.
 3. That cost of this application be in the cause.
2. The motion is premised on the grounds on the body of the application and the Supporting affidavit of the Applicant, sworn on 15/05/2025. He deposed that he was contracted by the Respondent to do construction service works amounting to Kshs. 41,257,900/= of which he was paid a total of Kshs. 30,218,093/= leaving a balance of Kshs. 11,039,807/=. The Applicant further deposed that he instituted a suit against the Defendant vide Eldoret MCCC No. E406 of 2023 claiming a balance of Kshs. 11,039,807/= being the outstanding payment for the contract work having offered construction services to the Defendant, however, the Court opined that even if Kshs. 30,218,093 has already been paid, the amount of Kshs. 41,257,900/= typically governs the jurisdiction threshold.



3. Furthermore, the Applicant deposed that the Respondent filed a Defence and raised a Preliminary Objection on the jurisdiction of the Magistrate's Court at Eldoret that the contract exceeds the pecuniary jurisdiction of the Magistrate's Court and that on 29/04/2025, the Court upheld the Preliminary Objection and directed that he has liberty to move this Honorable Court for transfer orders.
4. The Applicant urged that it will therefore be in the interest of justice that the aforesaid suit be transferred to the Eldoret High Court for hearing and determination.

Response

5. In response to the Application, the Respondent filed Grounds of Opposition dated 17/06/2025 as follows:
 1. That Eldoret CMCC No. E406 of 2023 is a nullity in law for being filed in a Court with no jurisdiction hence the same cannot be transferred.
 2. That this Honorable Court has no jurisdiction to transfer a matter from a Court of no jurisdiction to a Court of competent jurisdiction.
 3. That the Applicant had the option to withdraw the suit before the Magistrate Court and file in the proper forum.
 4. That the application is a non-starter, incompetent, fatally defective and an abuse of the Court process.

Submissions

6. The Application was canvassed vide written submissions. Both the Applicant and the Respondent filed submissions dated 8/10/2025.

Applicant's Submissions

7. Counsel for the Applicant began by citing Section 18(1)(b) of the *Civil Procedure Act* in regard to the High Court's power to transfer suit. Counsel then submitted the power under Section 18 is discretionary and should be exercised to advance the ends of justice, as envisaged under Article 159(2)(d) of *the Constitution*, which directs that justice shall be administered without undue regard to procedural technicalities. Counsel further submitted that the trial Court itself expressly directed that the Applicant was at liberty to move this Honorable Court for transfer orders, hence this application is properly and procedurally before the Court.
8. Counsel observed that the Respondent contends that a suit filed in a Court lacking jurisdiction is a nullity and therefore incapable of transfer, citing *Equity Bank Limited vs. Bruce Muitie Mutuku t/a Diani Tour Travel* [2016] eKLR, where the Court of Appeal observed that: "It would be an absurdity to transfer a suit filed in a Court lacking jurisdiction to a Court with jurisdiction because such a suit is a nullity ab initio." Counsel submitted that this position has since been qualified in subsequent jurisprudence.
9. In *Phoenix of E.A. Assurance Co. Ltd v S. M. Thiga t/a Newspaper Service* [2019] eKLR, where the Court of Appeal clarified that: "It is the Court that determines jurisdiction. If a party files a matter in a Court lacking jurisdiction but the same is discovered before hearing, the proper course is to have the matter transferred to the appropriate Court rather than striking it out, in the interest of justice." Counsel also relied on the case of *Kagenyi v Musiramo & Another* [1968] EA 43.



10. Counsel further submitted that in the present case, the Applicant acted in good faith, filing the suit in the Magistrate's Court believing it possessed jurisdiction based on the claim amount of Kshs. 11,039,807/=, which is within the limit of a Senior Principal Magistrate. Counsel stated that the jurisdictional issue arose only because the Respondent argued that the total contract sum Kshs. 41,257,900/ rather than the balance claimed determined jurisdiction on a purely technical issue, not a deliberate abuse of process. Counsel thus urged this Court to invoke its inherent powers under Section 3A of the Civil Procedure Act to prevent injustice and multiplicity of suits. Counsel contended that to strike out the suit would unjustly compel the Applicant to refile, incurring further expense and delay.
11. Counsel maintained that the discretion to transfer a suit should be exercised guided by the principles of justice, convenience, and absence of prejudice. He relied on the case of Hangzhou Agrochemicals Industries Ltd v Panda Flowers Ltd [2012] eKLR.
12. In response to the Respondent's first ground of opposition, Counsel submitted that the Applicant submits that the lower Court did not declare the suit a nullity. Rather, the trial Court merely held that it lacked jurisdiction and expressly directed the Applicant to seek transfer orders before this Honorable Court. Counsel argued that this suit remains valid and properly pending subject to this Court's determination on transfer.
13. As regards the second ground of opposition, Counsel relied on Section 18(1)(b) of the Civil Procedure Act, which expressly confers upon the High Court the discretion to withdraw and transfer proceedings from a subordinate Court to itself for trial or disposal.
14. With respect to the third ground of opposition, Counsel submitted that such an approach would be contrary to the constitutional principles under Article 159(2)(b) of the Constitution of Kenya, which obligate Courts to ensure that justice is administered without undue delay. Counsel urged that refile the matter would result in unnecessary expense, procedural repetition, and waste of judicial time, contrary to the spirit of the overriding objective under Sections 1A and 1B of the Civil Procedure Act.
15. Finally, in view of the fourth ground of opposition, Counsel submitted that the present application is properly before the Court, having been filed pursuant to the trial Court's direction and being supported by a competent affidavit as required in law. Counsel urged that the application is firmly anchored on clear statutory provisions and the inherent jurisdiction of this Honorable Court to make such orders as may be necessary for the ends of justice.
16. According to Counsel, none of the Respondent's grounds raise any valid legal bar to the grant of the orders sought. Counsel urged that the Respondent has not demonstrated any prejudice that would be occasioned by the transfer of the matter to this Court, and he further urged the Court to overrule the objections and allow the application as prayed.

Respondent's Submissions

17. Counsel begun by appreciating that jurisdiction is the root of any matter filed in Court. He relied on the case of Owners of Motor Vessel Lilian "S" vs. Caltex Kenya Limited [1989] KLR. Counsel urged that it follows then that jurisdiction is what gives life to a matter. Counsel submitted that therefore, if it is lacking a Court has no power to handle the issues brought fourth. He relied on the case of Equity Bank Limited vs. Bruce Muitie Mutuku t/a Diani Tour Travel [2016] eKLR.
18. Counsel submitted that it is not in dispute that the initial suit in Eldoret MCCC No. E406 of 2023 was filed in a Court with no jurisdiction and thus the available remedy was withdrawal and subsequently filing the same in a Court of competent jurisdiction. Counsel urged that this Court not to use its discretion in vain and grant the prayers sought in the application which are contrary to the laid down



principles and the law. Counsel also relied on the case of Phoenix of E.A. Assurance Co. Ltd v S. M. Thiga t/a Newspaper Service [2019] eKLR (Supra). Counsel maintained in the circumstances, no injustice is bound to be suffered by the Applicant if this Application is dismissed, however allowing such an application will be akin to sanitizing a nullity.

19. In the end, Counsel urged the Court to be guided by words of Lord Denning in the case of Macfoy vs United Africa Co. Ltd [1961] 3 All ER, 1169 and the case of Albert Chaurembo Mumba and 7 Others vs. Maurice Munyao & 148 Others [2019] eKLR.

Determination

20. Having considered the application, the response and the submissions by the parties the issue that arises for determination is Whether this court has the jurisdiction to transfer the suit from the Lower Court to the High Court in light of the Lower Court’s finding on want of jurisdiction by itself.
21. The Applicant seeks to have Eldoret MCCC No.406 of 2023 transferred to this Court for hearing and determination on the grounds that the trial Court lacks pecuniary jurisdiction to hear and determine the same.
22. The Respondent on the other hand maintains that this Court has no jurisdiction to transfer a matter from a Court of no jurisdiction to Court of competent jurisdiction.
23. The power bestowed upon the High Court to transfer suits of a Civil nature is provided for in Section 18 of the Civil Procedure Act that stipulate 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”.
24. In the locus classicus case of 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.

25. In *Equity Bank Limited v. Bruce Mutie Mutuku t/a Diani Tour Travel* (2016) eKLR (Supra), the Court of Appeal echoed these statements in the following manner: -

“In numerous decided cases, Courts, including this Court have held that it would be illegal for the High Court in exercise of its powers under S.18 of the *Civil Procedure Act* to transfer a suit filed in a Court lacking jurisdiction to a Court with jurisdiction and therefore sanctify an incompetent suit. This is because no competent suit exists that is capable of being transferred. Jurisdiction is a weighty fundamental matter and to allow a Court to transfer an incompetent suit for want of jurisdiction to a competent Court would be to muddle up the waters and allow confusion to reign, it is settled that parties cannot, even by their consent confer jurisdiction on a Court where no such jurisdiction exists. It is so fundamental that where it lacks parties cannot even seek refuge under the O2 principle or the overriding objective under the *Civil Procedure Act*, the *Appellate Jurisdiction Act* or even Article 159 of *the Constitution* to remedy the same.

...In the same way, a Court of law should not through what can be termed as judicial craftsmanship sanctify an otherwise incompetent suit through transfer.”

26. In *Kagenyi v Musiramo & another* (1968) EA 43, (Supra) it was held that the power to transfer a case to the High Court for hearing may only be exercised if the Court before which it is filed is a Court vested with competent jurisdiction to try and dispose of the matter. If it is incompetent, the High Court lacks jurisdiction effect the transfer.
27. In any dispute before the court, jurisdiction is key. It must be present at the time the suit was filed. The only way to resolve a suit filed without jurisdiction is to withdraw the same and file a fresh suit in a Court that has the requisite jurisdiction to handle it. A suit that is filed without jurisdiction must therefore fail. The Court cannot grant itself jurisdiction if it does not have it. In this regard, it is clear from the above authorities that the power to transfer a case to the High Court for hearing can only be exercised if the Court before which the suit was filed was vested with the competent jurisdiction to try and dispose of the matter.
28. For reasons that this was not the case before the court wherein the initial suit sought to be transferred was filed, it is my finding that the Application for transfer by the Applicant lacks merit and the same is accordingly dismissed with costs to the Respondent.

READ DATED AND SIGNED AT ELDORET ON 19TH MARCH 2026

E. OMINDE

JUDGE

