



Waka (Legal Representative Suing on Behalf of the Deceased Irene Mbinya Kiet) v Thitai & 2 others (Miscellaneous Civil Application E1330 of 2025) [2026] KEHC 3664 (KLR) (Civ) (19 March 2026) (Ruling)

Neutral citation: [2026] KEHC 3664 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

MISCELLANEOUS CIVIL APPLICATION E1330 OF 2025

JN MULWA, J

MARCH 19, 2026

BETWEEN

**GERRY MAENDE WAKA APPLICANT
LEGAL REPRESENTATIVE SUING ON BEHALF OF THE DECEASED IRENE
MBINYA KIET)**

AND

**JULIET THITAI 1ST RESPONDENT
MATER HOSPITAL 2ND RESPONDENT
AAR HEALTHCARE LIMITED 3RD RESPONDENT**

RULING

1. The Application dated 16/09/2025 was filed by Gerry Maende Waka (hereafter the Applicant) against the Respondents seeking orders to stay proceedings in Miliminani Commercial Courts MCCC No. 6481 of 2019 V. Julient Thigai & 2 Others; and transfer the said case to this court for hearing and determination.
2. The Applicant, being the legal representative of the deceased suing on behalf of the deceased – Irene Mbinya Kieti – swore the supporting affidavit on an even date. It is grounded on Section 1A, 1B and 3A of Cap 21 (CPA) and Order 51 rule 123 of the *Civil Procedure Act* (CPA) and Article 165(3).
3. The Applicant’s case is that the trial court lacks jurisdiction to entertain the suit pursuant as prior to filing the suit, it had



filed a complaint dated 22/03/2017 at the Kenya Medical Practitioners and Dentists Board (KMPDB) against the Respondents; fearing that its claim may be time barred before the ruling may be delivered; which ruling was delivered on 17/10/2020 dismissing the complaint.

That earlier the Applicant filed its medical negligence claim in the CMCC's court stated above, which is pending determination being partly heard by the court hence the motion for determination urging that the cause involves complex questions on medical negligence and duty of care which he states falls within the jurisdiction of the High Court under its original jurisdiction.

4. The motion is opposed.
5. The 3rd Respondent's case is contained in the 3rd Respondent's replying affidavit wherein it depones that it was not privy to the treatment received prior to admission of the deceased to its hospital (Matter hospital) as well as to the background and or advice given by the 2nd Respondent, AAR Health Care Ltd.
6. The Respondents aver that the Chief Magistrates Court has no jurisdiction to hear the case filed therein, while calling to aid Section 20(9) of the *Medical Practitioners and Dentists Act* that provides that any aggrieved party from its decision is entitled to appeal to the High Court within 30 days of the decision, that the ruling was delivered on 7/10/2020 and therefore the suit filed on 16/09/2025 is time barred and ought to be dismissed on that legal issue as well as lack of jurisdiction of this court to entertain the motion.
7. Lastly, it is the 3rd Respondent's case that the motion under review is but a waste of time of the court and should be struck out with costs.
8. The 1st and 2nd Respondent filed a joint response to the motion by grounds of opposition dated 21/10/2025, positing that Section 18 CPA does not envisage or permit transfer of a suit from the subordinate court to the High Court where the said court lacked jurisdiction in the first instance, that KMPDC having made a conclusive decision, the only remedy was to appeal to the High Court rather than filing a suit to the said Chief Magistrates Court; urging the court to dismiss the motion with costs.

Directions were taken for filing submissions.

9. The Applicant filed its submissions dated 3/02/2026 whereas the 3rd Respondents is dated 14/10/2025. The 1st Respondent did not file submissions.

Applicant's Submissions

Two issues concern for determination thus:

1. Whether this court has jurisdiction to transfer the suit in the subordinate court to the high court.
 2. Who shall bear the costs of the application?
10. On court's jurisdiction to transfer suits, Section 18 CPA and Article 165(3) and 6 are cited to urge that transfer of a suit where permissible the court has jurisdiction to prevent injustice and multiplicity of suits, as held in *Equity Bank Ltd v. Bruce Mutie Mututut t/a Diana Tour Travel* [2016] KECA 250 (KLR) and reinforced by Article 165(3) (a) of *the Constitution*.
 11. Whereas the Applicant acknowledges that the CM's court has no jurisdiction to entertain a claim arising from a decision of the KMPDB it states that the court by Section 18 of the CPA, has jurisdiction to transfer such suit to itself, at any stage for trial and determination – citing the case of *Martha Karua*



& Another [2021] eKLR, where court emphasized that proceedings conducted by a court without jurisdiction are nullity.

12. The Applicant, in face of the legal pronouncements, urged for the application to be allowed, the court exercising its statutory and constitutional authority to withdraw and the suit pending at the subordinate court to this court for hearing and final determination, arguing that the Respondents will not be prejudiced by the transfer.
13. On the matter of costs the Applicant posited, governed by Section 27 (i) of the CPA the circumstances appertaining thereto, the Respondents should bear the costs of the application.

3rd Respondents Submissions.

14. The 3rd Respondent flagged four issues;-
 1. Whether the application is time barred
 2. Whether the subordinate court lacked jurisdiction to entertain the original claim
 3. Whether the High Court can transfer a matter instituted in a court without jurisdiction
 4. Whether the Applicant is entitled to the orders sought.
15. It is the 3rd Respondent's submissions that the application is grossly time barred as it offends Section 20(9) of the KMPD Act that provides for 30 days upon which a party aggrieved by its decision may file an appeal not to the subordinate court but to the High Court.
16. On the 2nd issue, it is submitted that the subordinate court lacked jurisdiction to entertain the original claim hence I should be struck out, citing the holding in the case Owners of the Motor Vessel "Lillians" v. Caltex Oil (Kenya) Ltd [1989] KLR I, wherein it was held that jurisdiction is everything; without it a court must down its tools, as whatever it does amounts to naught.
17. On transfer of the subordinates case to the High Court, it is its case that a case filed in a court without jurisdiction is a nullity and cannot be transferred to another court with jurisdiction relying on the case of Phoenix of EA Assurance Co Ltd v. S. M. Thiga t/a Newspaper Service [2019]eKLR where it was held that the High Court lacks legal foundation to allow transfer as a suit filed in a court without jurisdiction.

Analysis and Determination

18. Upon the affidavit material placed before the court and submissions, the court postulates issues for determination as follows follows-
 - a. Whether the subordinate court vide suit filed as MCCC No. 6481/2019 has jurisdiction to entertain the case.
 - b. Whether this court has authority and jurisdiction to transfer the suit from the subordinate court to itself.
 - c. Who shall bear the costs of the application?



Whether the subordinate court has jurisdiction to entertain the subordinate court as filed vide MCCC No. 6481 of 2019.

19. The Applicant admitted that the subordinate court lacks jurisdiction over the claim, stating generally, that this court by dint of Section 18 (1) of the Civil Procedure Act (CPA) is empowered to withdraw and transfer
- a. And transfer any suit, appeal or other proceeding before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same.
 - b. Withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter
 - i. Try or dispose of the same; or (emphasis mine)
20. However, for the High Court to transfer a suit from the subordinate court to itself, the subordinate court must have had the requisite jurisdiction to hear and determine the case in the first instance.
21. The subordinate suit was filed in 2019, then on 22/03/2017 he lodged the complaint at the Kenya Medical Practitioners and Dentists Board (KMPDB) before it rendered its ruling, thus parallel proceedings, for reasons stated that “..... fearing that I might be barred in filing a suit seeking compensation for the death of my late wife, I decided to file MCCC 6481/2019”. The pleadings in the subordinate court are annexed as P.ext. “GWM -1” being a further amended plaint.
22. I have considered the reliefs sought in the further amended plaint; and the original plaint; the relevant paragraphs being:-
- Particulars negligence of the 1st Defendant; 2nd Defendant and 3rd Defendants as well as reliefs sought in the plaint against the defendants; at paragraph 13 under the Law Reform Act and special damages, in the sum of Kshs. 616,564.
23. It is evident that the medical negligence claim by the Plaintiff against the Defendants jointly and severally against the Defendants as filed in 2019 and amended in 2021 were competently filed in the subordinate court, which has a monetary jurisdiction of upto Kshs. 20 million.
24. It is only upon the KMPDB rendering its decision on the complaint lodged on 7/10/2020 that the Plaintiff says got wind of its ruling dismissing the complaint that it moved to file the instant application dated 16/09/2025 five years thereafter, seeking transfer of the suit to the High court.
25. Magistrates’ Courts draw their jurisdiction from the Magistrates Courts Act, No. 26 of 2015. The courts have both civil and criminal jurisdictions. Section 6 & 7 provides for the Civil Jurisdiction of a Magistrate’s Court thus- A magistrate’s Court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed:-
- 7(a) Twenty million shillings, where the court is presided over by a Chief Magistrate.
26. There is no dispute as to the nature of the claim pending in the Magistrate Court; it is a civil suit, arising from what the Plaintiff alleges to be professional negligence of a medical negligence nature against the Defendants which was dismissed by KMPDB and his intention to appeal from the and decision, which by didn’t of Section 20 (9) of the KMPD Act ought to be lodged within 30 days to the High Court, which is the court currently with jurisdiction to determine an appeal from the tribunal.



27. I do not see how the transfer of the case pending in the CM's Court will aid the Applicant in the matter of his intention to appeal against its decision, rendered on 7/10/2020 which is already time barred by close to five years, to wit, all parties agree.
28. I have taken note of each parties pleadings and submissions, to which this court agrees; save that upon consideration of the nature of the claim before the Chief Magistrates Court, and what informs the Applicant of its application for the case to be transferred to the High Court. Nothing of substance has been provided.
29. Even if the order to transfer the suit to the High Court, what effect would it bring to the suit? Would the Applicant file the appeal from the KMPDB's decision therein? Would it seek leave to file the appeal out of time in the suit? KMPD Act provides for the procedure of appeals from its decision. There would in my view be no way the appeal would form part of the pending case at the CM's court case.
30. I am of the opinion that the case pending at the Chief Magistrates Court be heard to finality under the jurisdiction of the Chief Magistrate. The Applicant would be at liberty to include the ruling of the KMPD Board in its documentation if necessary, upon of course obtaining leave of the court if it thinks it necessary.
31. The learned decisions of Superior Courts cited by the parties speak to the powers of the court to transfer suits from the subordinate courts to the high court. I however note the Applicant has not sufficiently addressed the core issue here; the main reason why the transfer of the suit to high court is sought.
32. On the second issue, I come to the conclusion that indeed under Section 18 of the [Civil Procedure Act](#), this court is empowered and has authority to transfer the suit from the subordinate court to itself upon cogent and sufficient cause shown. The Applicant has failed to persuade the court to exercise its discretion in its favour.
33. In conclusion, I find no merit in the application dated 16/09/2025. It is dismissed.

I am minded that under Section 27 CPA costs would ordinarily follow the event. The Proviso thereto gives the court latitude for good reasons to order otherwise. The court is persuaded for reasons in the body of this ruling to direct that costs to of the application to abide the outcome of the suit.

It is so ordered.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 19TH MARCH, 2026.

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JANET MULWA.

JUDGE

