

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KIAMBU

CIVIL MISCELLANEOUS APPLICATION NO.E017 OF 2026

MASAFI LIMITED.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF KIAMBU.....RESPONDENT

RULING

1. For determination before this Court is the **Notice of Motion application** dated 11th February, 2026 which seeks the following orders:

a) *Spent.*

b) *THAT this Honourable Court be pleased to transfer Kiambu MCCC No. E453 of 2024 Masafi Limited –vs- County Government of Kiambu of hearing and determination before Kikuyu Magistrates Court.*

c) *THAT the court be at liberty to make such order or further orders as it deems expedient to meet the ends of justice.*

d) *Costs of this application be provided for.*

2. The application is based on the grounds as set out on its face of it and the Supporting Affidavit of **Francis Muiruri Wanyoike** sworn on the instant date. According to the Applicant, he filed the matter in the Kiambu

Magistrates Court in 2024. And on 17th December, 2024, the Chief Magistrate therein, Hon. Gethi Kibiru on his own motion, directed that the matter be transferred to Kikuyu Magistrates Court for hearing and determination since the cause of action arose in Kikuyu.

3. The Applicant contends that his former advocates were not aware of the said proceedings but now urges the court to allow the transfer of the matter for a speedy determination of the same.
4. When the matter came up on 17th March, 2026, the Applicant's Counsel stated that the application was unopposed and sought that the same be allowed as prayed. The court has noted the Affidavit of Service sworn by **Bryonne Francis** on record and a reading of the same shows that service was effected upon the Respondent via email address Kiambucountylegaloffice@gmail.com on 16th February, 2026. He has attached an email extracted from the Case Tracking System(CTS), the court notes that the Respondent has only filed a **Notice of Appointment of Advocates** dated 17th March, 2026.

Analysis and Determination

5. I have read through the application and grounds upon which it is premised

both on its face and supporting Affidavit and find the main issue for determination being whether the application for transfer of suit has merit.

6. The jurisdiction of the High Court to transfer suits from one Court to another is provided for under **Section 18 of the Civil Procedure Act** which states as follows:-

“(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.”

7. The circumstances under which an order to transfer a suit may be granted were set out by the court in the case of David Kabungu –vs- Zikarenga & 4 Others Kampala HCCS No. 36 of 1995, as follows:-

“Section 18(1) 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...”

8. In the instant case, it has not been denied by the Applicant that the cause of action arose in Kikuyu. In view of this, and there being no opposition to the application, then in terms of territorial jurisdiction, this court finds that the most appropriate court to hear and determine the same would be Kikuyu Magistrate’s Court. Further, it ought to be appreciated that from the provision of **Section 18 of the Civil Procedure Act**, the Magistrates Court does not have powers to transfer or withdraw any suit, appeal or other proceedings pending it for trial or disposal to any court subordinate to it or competent to try and dispose of the same.

9. For these reasons, this Court finds that the **Notice of Motion** application

dated 11th February, 2026 has merit and is allowed in the following terms:-

- a) *An Order be and is hereby issued to transfer Kiambu MCCC No. E453 of 2024, Masafi Limited –vs- County Government of Kiambu to Kikuyu Magistrates Court for the hearing and determination.*
- b) *The costs of this application be in the main cause.*

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU
THIS 25TH DAY OF MARCH, 2026.**

**D. O. CHEPKWONY
JUDGE**

In the presence of:

Mr. Ogille counsel for Applicant
Court Assistant - Martin