

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**SUCCESSION MISC. APPLICATION CASE NO. E024 OF 2025**

VINCENT SAVINI ACHANDO.....

APPLICANT

VERSUS

ABIGAEI ASIGWE ANDANJE.....

RESPONDENT

**RULING**

1. The Applicant herein filed a notice of motion application dated 24<sup>th</sup> November 2025 seeking the following orders;

- a) *THAT the court certifies this application as urgent and the same be heard ex parte and service be dispensed with*
- b) *THAT this Honourable court be pleased to transfer KAKAMEGA MAGISTRATE COURT MCCHCC/E071/2025 from KAKAMEGA MAGISTRATE'S COURT to TONONOKA CHILDREN COURT (MOMBASA) for hearing and final determination.*
- c) *THAT the said suit KAKAMEGA MAGISTRATE COURT MCCHCC /E071/2025 is coming for mention on 16<sup>th</sup> December 2025 before Hon. Dorcas O. Mac'Andere*
- d) *THAT the court be pleased to issue an order of stay of proceedings in KAKAMEGA MAGISTRATE COURT*

*MCCHCC/E071/2025 pending hearing and determination of this suit/application.*

*e) THAT the cost of this application be provided.*

2. The application is premised on the grounds set out on its face and on the supporting affidavit sworn on the same date by the Applicant, who stated that he was the biological father of the suit minor and further that all the parties in the proceedings live within Mombasa County, with the Respondent working with the Mombasa County Government in Mombasa County. He claimed that all the medical services and the minor's needs are catered to at Mombasa as he attends Premier Hospital, Pandaya Memorial Hospital, Coast General Teaching and Referral Hospital and a specialist Pediatrician.
3. He contends that it would be for the best interest of the minor if the matter is heard in Tononoka, Mombasa since they all live in Mombasa and further that the matter can be heard by the Director Children services in case of any social inquiry by the court in any case if the matter does require a physical attendance in court, they can both avail themselves without incurring an addition expense.
4. According to the applicant, the respondent had denied him access to the minor, and further, if the minor was to be availed in Kakamega court, he would have to incur expenses as he would have to request 3 days off to travel from Mombasa, as well as factor in accommodation and food expenses.
5. He avers that the filling of the claim in the Kakamega court is an abuse of the court's process as both of them reside and work in

Mombasa county and pray that the matter Kakamega Magistrate Court M CCHCC/e071 /2025 be transferred from Kakamega to the Tononoka Children's court Mombasa.

6. The respondent filed their replying affidavit dated 5<sup>th</sup> January 2026, where she averred that the cause of action arose in Kakamega, where the applicant chased her and the minor away from their matrimonial home, and she went to stay with her parents, who reside in Kakamega County.
7. She claimed that the applicant went back to Mombasa, although he moved away from where they were residing together. She claimed that she solely takes care of the minors who have serious medical needs with the support of her siblings and parents, who reside in Kakamega and Trans Nzoia County.
8. She averred that the minor has stayed in Kakamega since early 2024 after the applicant chased them away.
9. She admits that she works as a support staff within Mombasa county and the salary she receives cannot help herself and the minor, and that the Applicant has refused to assist them despite having a permanent and pensionable job and income flats attracting KShs. 200,000/= per month in Kakamega.
10. According to the Respondent, the applicant has not informed the court where the minor will reside as he moves all their household items from their Mombasa house and matrimonial house in Kakamega.

11. She blames the Applicant for not providing for the minor despite him having a stable job and states that she is currently working on her transfer to come back home in Kakamega for the welfare of the minor, and is currently on sabbatical leave and cannot stay in Mombasa with the minor.
12. She prays that the application be dismissed with costs
13. The application was canvassed by way of a written submission.

**Respondent's submission.**

14. In their submission dated 24<sup>th</sup> February 2026, the Respondent avers that the applicant had not deny their permanent residence in Kakamega County and that the cause of action arose in Kakamega that is where the Applicant chased them away from their matrimonial home and avers that the matters are currently being heard virtually and through the virtual courts and e filing platform, the matters can be heard from anywhere and dismissed the applicant claim that it will hinder his movement to move from one station to another and avers that magistrates' court have jurisdiction to hear the application and as such the court at Kakamega law court can hear and determine the matter.
15. On the issue of maintaince she relied on Article 53 of the Constitution and the best interest of the minor as well as Article 19 of the African Charter on the Rights and the welfare of the child.
16. She states that the child is entitled to be maintained by both parents, and as such, the applicant cannot escape his

responsibilities. She claimed that the applicant moved from where they resided together in Mombasa to an unknown area despite the fact that she earns very little and is unable to support herself and the minor, despite taking up a loan to build flats in Kakamega, which the applicant collects the rent.

17. She claimed that the minor abandoned them in Kakamega despite the minor's serious medical condition, and that he relies on the support of her siblings and parents, who stay in Trans Nzoia and Kakamega county.

18. According to the respondent, the applicant has abandoned his responsibility to care for the minor and even blocked her number and efforts to reach him have been futile. She states that she is working to get a transfer back to her hometown in Kakamega and is currently on sabbatical and unable to stay in Mombasa with the minor.

19. They pray that the application be dismissed with costs.

20. At the time of writing the judgment, the appellant's submission was not in the system.

### **Analysis and determination**

21. I have considered the Notice of Motion application, the grounds in support, the Respondent Replying Affidavit and the submission on record. The issues for determination are:

*a) Whether this court should exercise its discretion under Section 18 of the Civil Procedure Act to transfer the suit from Kakamega Magistrate's Court to Tononoka Children's Court, Mombasa.*

*b) Whether a stay of proceedings in the lower court is warranted pending determination.*

22. On the first issue, Section 18(1) of the Civil Procedure Act empowers the High Court to withdraw any suit or proceeding pending in a subordinate court and transfer it to another subordinate court of equal or superior competence, or try it itself. The discretion is wide but must be exercised judicially, considering factors such as the balance of convenience, where the cause of action arose, the residence of the parties, expense, and prejudice

23. In children's matters, the paramount consideration is the best interests of the child, as enshrined in Article 53(2) of the Constitution and Section 4(3) of the Children Act, 2001. Section 73 of the Children Act vests jurisdiction in Children's Courts to hear custody and maintenance disputes, with no bar to transfer provided it serves the child's welfare. In the case of **MAO v DSA (Miscellaneous Case E007 of 2025) [2025] eKLR**, the court weighed best interests in denying transfer to avoid conflicting directions.

24. It is not disputed that the Children's Court at Kakamega is a court of competent jurisdiction. The Applicant does not challenge jurisdiction; rather, he invites this Court to reallocate the matter to Tononoka law Courts on grounds of convenience.

25. According to the Respondent, the cause of action arose in Kakamega, where she claimed that the Applicant evicted her and the minor from their matrimonial home, which was in 2024. She

claims that she has strong family support networks in Kakamega and Trans Nzoia, crucial for the child's medical and daily needs. While the Applicant claims medical services in Mombasa and has produced the medical report from the hospitals, however there is no evidence adduced that equivalent care is unavailable in Kakamega or its environs, that transfer would enhance access of the minor to getting medical treatment.

26. The Respondent's sabbatical and planned transfer to Kakamega indicate the child's stability is tied to that region. Virtual proceedings mitigate travel burdens, as noted **in IMM v JKK (Miscellaneous Application E094 of 2022) [2022] KEHC 16433 (KLR)**, where expeditious determination in the child's best interests outweighed transfer for convenience.

27. In **NHS v HP & 3 others (Miscellaneous Application 037B of 2022) [2023] KEHC 2227 (KLR)**, the court declined transfer where it would not serve the child's interests, emphasising supervisory jurisdiction under Section 18 is not automatic. Here, transferring risks disrupts the child's environment without a clear benefit, contrary to Sections 81-83 of the Children Act on custody and welfare.

28. On the question of hardship, the Applicant cites travel and accommodation costs. However, financial inconvenience alone does not amount to sufficient cause for transfer. In **Hangzhou Agrochemicals Industries Ltd v Panda Flowers Ltd Hangzhou Agrochemicals Industries Ltd v Panda Flowers Ltd**, the Court

held that the applicant must demonstrate real prejudice or injustice, not mere inconvenience.

29. The Respondent further raises a pertinent point that proceedings may be conducted virtually. While child matters may require occasional physical attendance, modern court infrastructure substantially mitigates geographical barriers by allowing for the online/ virtual proceedings and further children offices for social welfare can be done in any geographical area.
30. The Applicant has not demonstrated that he will suffer injustice if the matter proceeds in Kakamega. Nor has he shown that the minor's welfare will be enhanced by transfer.
31. The burden placed upon the Applicant in **David Kabungu v Zikarenga & 4 Others** **David Kabungu v Zikarenga & 4 Others** often cited with approval in Kenyan courts, has not been discharged. The balance of convenience does not overwhelmingly tilt in his favour.
32. This Court is therefore not persuaded that sufficient cause exists to warrant interference with proceedings before a competent subordinate court.
33. In matters concerning children, the court must not be guided by the convenience of parents but by the actual and practical welfare circumstances of the child. Article 53(2) of the Constitution provides that the best interests of the child are of paramount importance in every matter concerning the child.

34. On the second issue, no compelling case for a stay is made, as proceedings can continue virtually without prejudice.

35. In conclusion, the application lacks merit. The suit shall remain in Kakamega Magistrate's Court for expeditious determination in the minor's best interests.

**Orders:**

a) The Notice of Motion dated 24th November 2025 is dismissed.

b) This being a children's matter, I shall not issue orders as to costs.

c) This file is closed.

d) Right of Appeal 30 days is explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA  
13<sup>TH</sup> DAY OF APRIL , 2026**

**S.MBUNGI**

**JUDGE**

**In the presence of:-**

**CA:** Ang'onga

Dr. Mokuu present online though not audible due to technical problems. The court Assistant to upload the ruling on the CTS forthwith so that the parties and counsels can have access.