

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
MISC. CIVIL APPLICATION NO. E1106 OF 2025

ERDEMANN PROPERTY LTD 1ST APPLICANT
ZEYUN YANG.....2ND APPLICANT

VERSUS

LONDON DISTILLERS (K) LTD RESPONDENT

RULING

1. Before the Court for determination is the **motion dated 11/07/2025** filed by **Edermann Property Ltd** and **Zeyun Yang** (*hereafter the 1st & 2nd Applicants*) as against **London Distillers (K) Ltd** pursuant to **Section 1A, 3A & 18(1)(b) & (2)** of the **Civil Procedure Act (CPA)** and **Article 165(6)** of the **Constitution of Kenya** seeking *inter alia* -:

a) Spent.

b) Spent.

c) *The suit filed by London Distillers (K) Ltd in MCCC/70/2022 (formerly HCCC No. 49 of 2018) as against the Applicants be hereby withdrawn from Milimani Magistrate's Court and transferred to the High Court at Milimani for hearing and final determination.*

d) *This Honorable Court be pleased to issue any other relief it deems just and fit.*

e) *That the costs of the motion be provided for.*

2. The **motion is premised on grounds** amplified in the supporting affidavit of an even date and further affidavit dated 29/09/2025, both sworn by **Zeyun Yang**, who cites being

Managing Director of the **Edermann Property Ltd** and thus duly authorized to swear the affidavit on its behalf.

3. **London Distillers (K) Ltd** (*hereafter the Respondent*) on its part opposes the motion by way of a replying affidavit dated 29/09/2025 sworn by **Pushpinder Singh Mann**, who cites being the Administration Manager of the Respondent thus competent and duly authorized to depose the affidavit.
4. Directions were taken on disposal of the Applicants motion by way of written submissions, of which the parties had an opportunity to highlight. Having considered the material on record, the Court postulates that the issues for **determination concern-**

a) Whether the Court ought to transfer MCCC/70/2022 (formerly HCCC No. 49 of 2018) from Milimani Magistrate's Court to the High Court for hearing and final determination?

b) Who ought to bear the costs of the application?

Whether the Court ought to transfer MCCC/70/2022 (formerly HCCC No. 49 of 2018) from Milimani Magistrate's Court to the High Court for hearing and final determination?

5. In presenting the instant motion, the Applicants rely on among other provisions **Section 3A** of the **CPA** which specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court"", to wit, this Court's inherent powers was judiciously addressed by the Court of Appeal in **Rose Njoki Kingau & another v Shaba Trustees Limited & another [2010] KECA 87 (KLR)** and requires no restatement.

6. Alongside the above provision, the Applicants equally cite the provisions of **Article 165** of the **Constitution** and **Section 18(1)(b) & (2)** of the **CPA**. While the former provision provides for the High Court's unlimited original jurisdiction on all criminal & civil matters and jurisdiction to call for the record of proceedings before any subordinate Court or person, body or authority exercising judicial or quasi-judicial functions and make any order or give any directions it considers appropriate to ensure the fair administration of justice, **Section 18** of the **CPA** provides that: -

(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. *Ex-facie*, the Applicants' motion stems from an order of this Court issued on 17/05/2022 in **Nairobi HC Civil Case No. 49 of 2018** wherein **Meoli, J.** exercised her mandate pursuant to **Section 11** and **18(1)(a)** of the **CPA** by transferring the aforecaptioned suit to the Chief Magistrate's Court for trial and disposal.

That said, by the Applicants' affidavit, the deponent states that the Respondent's suit and Applicant's counter-claim being one premised on defamation, the Applicants have suffered loss of business and goodwill in excess of Kshs. 20,000,000/-, as highlighted in the assessment report by **Kabuya & Associates (Annexure ZY-3)**, of which is in excess of the pecuniary jurisdiction of the Magistrates Court's pursuant to **Section 7** of the **Magistrate's Court's Act**.

8. **Zeyun Yang**, goes on to depose that the Applicants are at risk of suffering substantial prejudice should the lower Court proceed to adjudicate on the matter and enter judgment, which award would be constrained to the pecuniary jurisdiction of the said Court. That this Court is properly clothed with jurisdiction to hear and determine the dispute between the parties meanwhile the Applicants success on their claim on loss suffered is a probative question reserved for trial.
9. He further states that jurisdictional challenge may be raised at any time even where the Applicants counterclaim is yet to be heard in part or at all. He concludes by deposing that no special or specific loss has been claimed by the Applicants in the counterclaim whereas the same has been projected as onwards

of Kshs. 16,290,416,267/- premised on the loss assessment report intended to be relied on at trial.

- 10.** The Respondent through **Pushpinder Singh Mann**, contends that at all material times relevant to the Applicants counter-claim, they were aware of the pecuniary value of their claim whereas their jurisdictional challenge ought to have been taken at the earlier instance. That on the backdrop of the Applicants claim and the orders issued on 17/05/2022, the latter ought to have promptly set aside, reviewed or appealed the same, to wit, the instant motion is an afterthought and barred by laches.
- 11.** He states that the matter is since partly heard before the lower Court and pending defence hearing whereas the Respondent's sole witness has since passed on. Therefore, in light of the foregoing, the lower Court suit should proceed to its final conclusion whereas the instant motion is an attempt to forum shop whereas it has been more than three (3) years since the suit was transferred for disposal before the lower Court, without any protest.
- 12.** With the above in reserve, as earlier noted, this Court's mandate and or authority to transfer a matter to a competent Court for disposal is donated by **Section 18(1)(a) & (b)** of the **CPA**. Here, it is not in dispute that on 17/05/2022, this Court *suo moto* transferred the Respondent's suit for disposal before the lower Court. It was not until July of 2025 that the Applicant moved this Court to have the file re-transferred to this Court for disposal and determination.

- 13.** While it is not in dispute that the suit and counterclaim were initially filed before a Court of competent jurisdiction thus validating the transfer to the lower Court pursuant to **Section 18** of the **CPA**, see **Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel [2016] KECA 250 (KLR)**, it is equally apparent from the face of the pleadings that the suit and counterclaim as presented fell within the pecuniary jurisdiction of the lower hence the order of 17/05/2022 by the court.
- 14.** Why do I say so? A cursory perusal of the Applicants counterclaim as pleaded at paragraph 25 of the counterclaim that- *“as a result of the public notice....carried out at the instruction or request of the Plaintiff, the 1st Defendant has suffered damage and loss of reputation in the eyes of its present and future national and international clients as well as the members of the public”*
- 15.** The purported loss was neither enumerated nor quantified on the face of the counter-claim. Nevertheless, in light of the averments in the counter-claim the Applicants *inter alia* sought judgment as against the Respondent, by way of a mandatory & permanent injunctions, general damages for libel and exemplary damages.
- 16.** Indubitably, it would appear that upon **Meoli, J.** perusing the gist of the rival pleadings, the judge was of the view that the claim would not exceed the pecuniary jurisdiction of the Magistrate’s Court thus dictating the transfer of the suit to the lower Court for disposal. Consequently, I am inclined to agree with the latter position, as taken, in the absence of any

averments in the rival parties' pleadings that would oust the lower Court of jurisdiction.

- 17.** Further, it would appear that the suit has since been partially heard before the lower Court and as deposed by the Applicants, the matter is pending defence hearing and judgment. The Respondent has advanced a valid argument that since transfer of the matter in 2022 it is not until three (3) years later that the Applicants have moved this Court vide the instant motion. While I agree with Applicants' proposition that want of jurisdiction can be raised at any time even on appeal, it still remains good law that the same ought to be raised at the earliest opportune moment.
- 18.** Here, it is evident that as a filing of their counter-claim the Applicants were in possession of the assessment report by **Kabuya & Associates (Annexure ZY-3)** at all material times prior to transfer of the matter to the lower Court and hearing of the Respondent's case. It cannot obtain, that three (3) years later, is when the Applicants gained the profound realization that their claim is projected onwards of Kshs. 16,290,416,267/- premised on the loss stated at the assessment report.
- 19.** In any event, it is equally trite that parties are bound by their pleadings, to wit, the Applicants have failed to specifically quantify the above figure in their pleadings. They cannot now be heard on the instant application seeking to transfer of the case for want of pecuniary jurisdiction of the lower Court after close of the Plaintiffs case. The Applicants reliance on the decision in **Ernest Omondi Owino & another v Felix Olick & 2 others [2021] KEHC 4920 (KLR)**, concerning the likely awardable quantum should their claim succeed and the decision in

Johnson Evan Gicheru v Andrew Morton & another [2005] KECA 307 (KLR), do not offer aid to the arguments in support of the motion in light of this Court's earlier rendition.

20. Therefore, the Court is not persuaded that the Applicants have demonstrated sufficient reason to justify the exercise of its discretion by transferring the lower Court suit to this Court. Thus the entire motion is without merit and ought to suffer the fate of dismissal.

Who ought to bear the costs of instant motion?

21. Consequently, in light of the above, the Applicants motion fails in totality.

It is dismissed.

On the question of costs, applying my mind to the provisions of Section 27 of the Civil Procedure Act (CPA), I award the same to the Respondent.

Further directions are issued that parties proceed to take up steps towards disposing of the suit to its final determination before the subordinate Court.

Orders Accordingly.

Delivered Dated and Signed at Nairobi this 16th day of April, 2026.

.....

JANET MULWA.

JUDGE