



Unity for Women Economic and Social Organisation (UWESO) v Mugwe (As Legal Representative of Mukurweini Women Poverty Self Help Group) (Miscellaneous Civil Application E049 of 2025) [2026] KEHC 6312 (KLR) (8 May 2026) (Ruling)

Neutral citation: [2026] KEHC 6312 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CIVIL APPLICATION E049 OF 2025**

MA ODERO, J

MAY 8, 2026

BETWEEN

**UNITY FOR WOMEN ECONOMIC AND SOCIAL ORGANISATION
(UWESO) APPLICANT**

AND

**ROSEMARY NGIMA MUGWE (AS LEGAL REPRESENTATIVE OF
MUKURWEINI WOMEN POVERTY SELF HELP GROUP) RESPONDENT**

RULING

1. Before this Court is the Notice of Motion dated 10th July 2025 by which the applicant UNITY FOR WOMEN ECONOMIC AND SOCIAL ORGANISATION (UWESO) seeks the following orders:-
 - “1. Spent.
 2. That this Honourable Court be pleased to withdraw Nyeri Small Claims Court Commercial Claim No. E148 of 2025 and transfer the same to Thika Small Claims Court for trial and disposal.
 3. Spent.
 4. That the costs of this application be costs in the main cause.”
2. The application which was premised upon Section 18 and 3A of the *Civil Procedure Act* (Cap 21) Laws of Kenya and order 50 Rule 1 of the Civil Procedure Rules was supported by the affidavit of even date sworn by Bedan Mwaura Mwangi, the CEO of the Applicant.



3. The Respondents Rosemary Ngima Mugwe (as legal Representative of Mukurweini Women Poverty Self Help Group) opposed the application for transfer of the suit through the Affidavit dated 5th November 2025.
4. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated 8th December 2025 whilst the Respondents advocate indicated to the court that they would not be filing any written submissions but would rely solely on their Replying Affidavit.

Analysis And Determination

5. This application emanates from Nyeri Small Claims Commercial Case No. E148 of 2025 filed by the Respondent in a claim of KShs. 517, 852/= against the Applicant.
6. The Applicant avers that the transactions relating to this claim were all processed through their Kiambu Office. That the Applicant will be calling six (6) witnesses all of who reside in Kiambu. Further that the Applicant will be seeking to rely on voluminous documents. That a hearing in Nyeri will occasion the applicant hefty transport costs. The Applicant submit that Thika Law Courts has territorial jurisdiction over the matter.
7. In opposing the application the Respondents insist that the case ought to be retained for hearing in Nyeri as the cause of action arose in Mukurwe-ini within Nyeri County. The Respondents state that their group is based in Nyeri County and comprises of elderly rural women who will suffer undue hardship and expenses if they have to travel to Thika for hearing. That such a transfer would hinder the Respondents right to access to justice.
8. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by the Applicant.
9. The transfer of cases from one Court of the Magistracy to another is a supervisory function of the High Court codified in Article 165(6) and (7) of the Constitution in the following terms:
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
10. Section 17 of the Civil Procedure Act provides as follows:

“ 17. Power to transfer suits which may be instituted in more than one court:
Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court; and the High Court after considering the objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed.”
11. Where a contest arises as to which Court of the magistracy shall hear and determine such a dispute, Section 17 mandates the High Court to decide which Court should take over the conduct of the



matters. Thus, Section 17 is an acknowledgement by the law that there are instances where a dispute may properly be instituted in two or more different Courts of the Magistracy.

12. Section 18 of the [Civil Procedure Act](#) further provides for transfer and withdrawal of cases before the Magistracy as follows:-

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 if 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.
 - (iv) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such 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. [emphasis my own]

13. For a matter to be transferred under Section 18 of the Civil Procedure Rules, the question to be answered are was the suit capable of being instituted in the first place in the first instance? By dint of Section 18 (1) (a) the trial court must be competent to hear the matter. There is no contest that the Nyeri Small Claims Court does have the requisite jurisdiction to hear and determine this matter. What the Applicant herein seeks is the transfer of the matter on grounds of territorial jurisdiction.

14. Section 15 of [Civil Procedure Act](#) states as follows:-

- “ 15. Other suits to be instituted where defendant resides or cause of action arises
Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction -
- a. the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
 - b. any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
 - c. the cause of action, wholly or in part, arises.

Explanation. (1) - Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall



be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation. (2) - A corporation shall be deemed to carry on business at its sole or principal office in Kenya, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Explanation. (3) - In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely -

- i. the place where the contract was made;
- ii. the place where the contract was to be performed;
- iii. the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.

Illustration. (a) A is a tradesman in Nairobi. B carries on business in Mombasa. B by his agent at Nairobi buys goods of A and requests A to deliver them to Mombasa by rail. A may sue B for the price of goods either in Nairobi, where the cause of action has arisen, or in Mombasa, where B carries on business.

Illustration. (b) A resides at Kisumu, B at Nairobi, and C at Mombasa. A, B and C being together at Nakuru, B and C make a joint promissory note payable on demand and deliver it to A. A may sue B and C at Nakuru, where the cause of action arose. He may also sue them at Nairobi, where B resides, or at Mombasa, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the court.” [Own emphasis]

15. The limitations addressed in Section 15 of the Civil Procedure Code concern immovable property.
16. The limitations are under Section 12 and 13 of the *Civil Procedure Act* which place the court trying a matter contingent on the nature of the subject matter being immovable, to wit that the suit will be tried in the local jurisdiction where the immovable property is situated.
17. The claim herein is a money claim for Kshs. 517,852 and is money which is not immovable.
18. By dint of Section 15 particularly explanation 3 which states that in suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely –
 - (i) the place where the contract was made;
 - (ii) the place where the contract was to be performed or the performance thereof completed;



(iii) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable. [Own emphasis]

19. This court has not had the benefit of scrutinizing the contract in question, however the Respondent has averred that the contract in question was made in Mukurweini. Therefore the cause of action did arise in Nyeri County and as such I see no valid reason upon which to transfer the suit to another court.

20. Finally this application fails and is dismissed in its entirety. Each party to meet its own costs.

DATED IN NYERI THIS 8TH DAY OF MAY 2026.

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MAUREEN A. ODERO

JUDGE

