



**LNW v COO (Miscellaneous Application E268 of 2024)
[2025] KEHC 624 (KLR) (Family) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
MISCELLANEOUS APPLICATION E268 OF 2024
H NAMISI, J
JANUARY 31, 2025**

BETWEEN

LNW APPLICANT

AND

COO RESPONDENT

RULING

1. The Applicant has filed Notice of Motion dated 15 November 2024 seeking the following orders:
 - i. This Honourable Court be pleased to order the transfer of Children Case No. E1816 OF 2024 now pending at the Chief Magistrate’s Children’s Court at Milimani Law Courts at Nairobi to the Children’s Court at Tononoka Law Courts, Mombasa for trial and disposal;
 - ii. The costs of this application be in the cause;
2. The Application is brought under sections 1A, 1B, 3, 3A, 15(a) and 18 of the *Civil Procedure Act*, Cap 21. The Application is supported by an affidavit sworn by the Applicant and premised on the grounds on the face of it.
3. In her Supporting Affidavit, the Applicant avers that the child, subject matter of the suit, resides and attends school in Mombasa. The child is in the custody of the Applicant. The Applicant further avers that it would be costly and inconvenient should the trial court call for a session with the child or require a Children’s Officer’s Report to be prepared.
4. Annexed to the Affidavit is a Complaint filed by the Respondent in Children Case No. E1816 of 2024 in Nairobi. At paragraph 4 of the Complaint, the Respondent states that the child is a Grade Two pupil at the Loreto Convent School in Mombasa, and resides at an undisclosed place within Mombasa County.



5. The Respondent filed a Statement dated 5 December 2024, as opposed to a Replying Affidavit. The said Statement mainly addresses the merit of the suit as opposed to the issue at hand, the Court that has geographical jurisdiction of the matter. At paragraph 4 of the Statement, the Respondent states as follows:

“the cause of action arose from the Applicant abandoning the minor in Mombasa with a third party and moving to start a new life and to live in Nairobi.”

6. The Respondent also avers that the Applicant ran away to Mombasa, where she remains holed up.

Analysis and Determination

7. Section 12 of the *Civil Procedure Act*, Cap 21 provides as follows:

Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immovable property, with or without rent or profits;
- (b) for the partition of immovable property;
- (c) for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- (d) for the determination of any other right to or interest in immovable property;
- (e) for compensation for wrong to immovable property;
- (f) for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.

8. Section 15 of the Act provides as follows:

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.
9. The law relating to transfer of suits is contained in Section 18 of the Act. Section 18(1)(b)(ii) which gives the Court discretionary powers 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. ...
 - 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
10. While exercising its discretion set out in Section 18 of the *Civil Procedure Act*, the Court will be mindful of the balance of convenience, questions of expense, interests of justice and possibilities of undue hardship that may be occasioned to the parties. These principles were set out in the case of *Kageny v. Musiramo & Another* [1968] E. A. 43 as follows:
- “It is a well-established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make a strong case to the satisfaction of the Court that the application ought to be granted. There are also authorities stating that the principle matters to be taken into consideration are balance of convenience, questions of expense, interests of justice and possibilities of undue hardship; and if the Court is left in doubt as to whether under all circumstances it is proper to order a transfer, the application must be refused.”
11. Mulla in the Code of Civil Procedure (2012) 18th ed. at p. 391 while expounding on Sections 20(a) and (b) of the Indian Civil Procedure, the equivalent of Section 15 of our *Civil Procedure Act*, observes:
- “The principle underlying s 20(a) and s (20)(b) is that the suit is to be instituted at the place where the defendant can defend the suit without undue trouble.”
12. Since this suit involves a child, the best interests of the said child are of paramount importance and supersede the rights and interests of the parties herein. The Court is bound by the paramountcy principle enshrined in *The Constitution* of Kenya and the *Children Act*. Article 45(3) of *The Constitution* provides:
- “A child’s best interests are of paramount importance in every matter concerning the child.”
13. Section 4(2) and (3) of the *Children Act* provide:
- (2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.



(3) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration...”

14. In the premise, it would be more convenient and in the best interest of the child that this matter be transferred to the Children’s Court at Tononoka Law Courts, to facilitate easy movement of the child, if and when the child will be required to attend Court. I, therefore, allow the Application and make the following orders:

- i. That the suit, being Milimani Children Case No. E1816 of 2024 be and is hereby transferred from Nairobi Children’s Court to Tononoka Children’s Court for hearing and determination;
- ii. That in the interest of justice, this being a matter that involves a child, the Deputy Registrar, High Court of Kenya at Nairobi, Family Division do facilitate the expeditious transfer of the said file to Tononoka Children’s Court for necessary action;
- iii. Costs to be in the cause

DATED AND DELIVERED AT NAIROBI THIS 31 DAY OF January 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

..Mr. Onyango.....for the Applicant

N/A.....for the Respondent

Libertine Achieng.....Court Assistant

