



**WEMC v DM (Miscellaneous Application E002 of 2024)
[2025] KEHC 800 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 800 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS APPLICATION E002 OF 2024
EM MURIITHI, J
JANUARY 30, 2025
IN THE MATTER OF APPLICATION FOR TRANSFER OF A SUIT
IN THE MATTER OF CHILDREN CASE NO. 007 OF 2020**

BETWEEN

WEMC APPLICANT

AND

DM RESPONDENT

RULING

1. By a Notice of Motion under certificate of urgency dated 9/1/2024 brought under Articles 48, 53 and 159 (2) (d) of the *Constitution*, Sections 1A, 3A, 15 and 18 of the *Civil Procedure Act* and all other enabling provisions of the law, the Applicant seeks that:
 1. The suit in Children’s case number 007 of 2020, be transferred from the Magistrate’s Court at Meru to the Children’s Court at Nairobi; Milimani Law Courts from hearing, and determination of the current and the subsequent Applications.
 2. The costs of this application be costs in the cause.
2. The application is premised on the grounds on the face of it and supporting affidavit of the Applicant sworn on even date. He avers that he resides in Mombasa while the minor and the Respondent reside in Nairobi, and not Meru. It is hard to understand why the suit was filed in Meru yet none of the parties reside there. The children’s court at Milimani has the territorial jurisdiction to hear and determine the pending and all other subsequent applications in relation to this suit. It is against the principle of access to justice to force him to be travelling from Mombasa to Meru while the same judicial services can be accessed at Nairobi. It is in the best interest of all the parties and justice that this matter is transferred to Children’s Court at Milimani in Nairobi.



3. In opposition to the application, the Respondent swore a replying affidavit on 20/2/2024 averring that the application is tainted with concocted allegations, frivolous averments and evident falsification of facts meant to delay the conclusion of the matter. The Applicant has been participating in this matter since inception in 2020, and there exists a warrant of arrest against him for disobedience of the consent, and thus the transfer is untenable in the circumstances. The instant suit has been concluded and the only remaining thing was for the Applicant to comply with the terms of the consent, which he utterly disregarded. In any case, the Applicant can attend the court proceedings virtually as physical attendance is not mandatory. The transfer of the suit will occasion unnecessary delay to justice contrary to the fundamental role of the court of expeditious disposal of disputes and natural justice. The best interests of the child are of paramount importance and supersede the rights of the parties herein. She urges the court to dismiss the application with costs as it unmeritorious and an abuse of the court process.

Submissions

4. In his submissions filed on 8/11/2024, the Applicant urges that it is in the interest of justice that the matter is transferred to Milimani Children’s Court for hearing and determination.
5. The Respondent insists that the matter is already concluded and there is no basis for the transfer sought. She prays for the dismissal of the application with costs as the same lacks merit.

Analysis and Determination

6. Indeed, the High Court is empowered under Section 18 of the [Civil Procedure Act](#) to withdraw and transfer any suit pending before a lower court to itself or to another court of competent jurisdiction to hear and determine it.
7. Section 15 of the [Civil Procedure Act](#) is instrumental because it provides that other suits ought to be instituted where the defendant resides or cause of action arises 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.”

8. The factors to be considered before transfer can be ordered were highlighted by the Court (G.V Odunga J as he then was) in [Hangzhou Agrochemicals Industries Ltd. v Panda flowers Ltd](#) [2012] eKLR which extensively dealt with a related matter of directions “that a matter filed in a particular High Court registry be heard in a different place” as follows:

“In my view, which view I gather from authorities and from the law, the court should consider such factors as the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration



of justice, the expense which the parties in the case are likely to incur in transporting and maintaining the witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case. If for example, the plaintiff, knowing that the defendant will not afford the cost of travelling all the way to defend a suit, decides to institute the same at a place farthest from where the defendant is with a view to either inflicting suffering on the defendant or forcing the defendant to settle, the court would be forced to intervene. In my view, since it is the plaintiff who has accused the defendant, the defendant should not be placed at the position of a disadvantage based on mere allegations. To the contrary, the plaintiff should institute the proceedings where the defendant is all factors being equal.”

9. Whereas the Applicant contends that the transfer is merited because none of the parties including the minor, the subject matter herein, reside in Meru, the Respondent is adamant that there is nothing to transfer to Nairobi because the case has already been concluded with the full participation of the Applicant.
10. The record is clear that the parties entered into a consent filed in the trial court on 31/1/2022, which was subsequently adopted as an order of the court, consequently bringing the proceedings herein to a close. It the Applicant’s blatant non- compliance with the said consent which culminated in the issuance of warrants of arrest in execution on 20/11/2023.
11. The court is minded that the grant of the transfer herein sought will be tantamount to circumventing justice by absolving the Applicant from arrest in execution of a legal order of the court, which is highly undesirable and untenable.
12. The Applicant does not challenge the trial court’s pecuniary and territorial jurisdiction to hear and determine the matter. He predominantly wishes to have the matter transferred to Milimani for his convenience. The court finds that convenience of a party cannot outweigh the parameters set by law and the ultimate desire to do substantive justice to the parties, more importantly here where the case is already concluded.
13. The court finds that the sought transfer would result in prolonged and unnecessary delay of this otherwise concluded matter, which expressly contravenes the overriding objectives of just, efficient and timeous disposal of matters as espoused under Sections 1A and 1B of the *Civil Procedure Act*. Needless to state, the existence of the virtual court platform has significantly eased litigants’ need to attend court physically.
14. In the end, this court finds that the Applicant has failed to demonstrate that there is proper basis for the transfer of this matter from Meru Chief Magistrate’s Court to Milimani Chief Magistrate’s Court. The Court also considers that the application borders on abuse of the court process where the applicant seeks to avoid the implementation of a consent order entered between the parties in the dispute before the trial court.

Orders

15. Accordingly, for the reasons set out above, the Applicant’s application dated 9/1/2024 is without merit and it is dismissed.
16. There shall be no order as to costs.



Orders accordingly.

DATED AND DELIVERED THIS 30TH DAY OF JANUARY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Omari Advocate for the Respondent.

Mr. Njuguna Advocate for the Applicant.

