



**Kenyan Alliance Insurance Company Limited v Kingara Gardens Limited (Miscellaneous Civil Application E1097 of 2024) [2025] KEHC 3854 (KLR) (Civ) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3854 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION E1097 OF 2024  
SN MUTUKU, J  
MARCH 26, 2025**

**BETWEEN  
KENYAN ALLIANCE INSURANCE COMPANY LIMITED ..... APPLICANT  
AND  
KINGARA GARDENS LIMITED ..... RESPONDENT**

**RULING**

**Notice of Motion**

1. Kenyan Alliance Insurance Company Limited, the Applicant herein, has moved this court through a Notice of Motion (the Application) dated 20<sup>th</sup> January 2025. The Application is anchored under Order 10 Rule 1, Order 12 Rule 7, Order 42 Rule 6(1) and (2), Order 51 Rule 1, and Order 51 Rule 15 of Civil procedure Rules and Section 1A, 1B, and 3A of the Civil Procedure Act and all enabling provisions of the law. The Application seeks the following orders:
  - i. Spent.
  - ii. That pending the hearing and determination of this application, this Honourable Court be pleased to issue interim orders staying the execution and effect of the orders issued on 5<sup>th</sup> December 2024 transferring Milimani CMCC No. E9918 of 2021 Kingara Gardens Limited v Kenyan Alliance Insurance Company Limited to the High Court at Kisumu.
  - iii. That this Honourable Court be pleased to set aside the proceedings and ex-parte Ruling taken on the 5<sup>th</sup> December 2024 and any other consequential orders thereto pending the hearing and determination of this application.
  - iv. That admit the matter for hearing on merit with the respective parties urging their respective cases and evidence (sic).



- v. That costs of this Application be provided for.
2. To support the application, the Applicant has argued that the orders of this court transferring the Milimani CMCC No. E9918 of 2021 to Kisumu High Court were issued in the absence of the parties; that the Applicant had not been served with the Application dated 6<sup>th</sup> May 2024 leading to breach of the Applicant's right to be heard under Article 50 of *the Constitution* of Kenya 2010 and contravention of natural justice.
3. The Applicant has argued that it only became aware of the matter after the Respondent belatedly served the Application through email after the application had already been allowed; that failure to serve the application deprived the Applicant the opportunity to challenge the same; that the orders issued on 5<sup>th</sup> December 2024 were irregularly issued and that the Applicant will suffer grave injustice as it would have been condemned unheard.

### **Replying Affidavit**

4. The Application is opposed through a Replying Affidavit sworn by Hannington Odongo Nyamudhe on 13/2/2025 who has described himself as the Director of the Respondent herein. He has stated that the Chief Magistrate's Court lacked jurisdiction to determine the claim after the Respondent amended the Plaint; that it became necessary to file the application dated 6<sup>th</sup> May 2024 to have this matter be transferred to Kisumu High Court for determination; that orders were granted to transfer the matter and that the Applicant will not suffer any prejudice by having the case transferred to the High Court in Kisumu. The Respondent urged that the Application be dismissed with costs.

### **Oral submissions**

5. The application was argued on 13<sup>th</sup> March 2025. Mr. Karanja for the Applicant submitted that the amendments of the Plaint to a claim of Kshs 23,469,721 ousted the jurisdiction of the Chief Magistrate's Court; that the Application seeking to transfer the case to Kisumu High Court was not adequately served on the Applicant; that contrary to the averments in the Replying Affidavit, it is not true that the Respondent was served with that application; that the advocate served is not the current advocate for the Applicant and that a Notice of Change of advocates and that there are no attachments to show that service was effected.
6. Mr. Karanja submitted that a court cannot transfer a matter from a court that lacks jurisdiction because there is nothing to transfer. He urged that the application be allowed so that the parties can be afforded an opportunity to canvass the application seeking transfer.
7. Mr. Ariho for the Respondent relied entirely on the Respondent's Replying Affidavit and submitted that the application was served on the advocates on record and that the Notice of Change of advocates was not served on them. He submitted that this Court has powers to transfer a suit; that the court, suo moto, handled the matter and gave orders transferring this matter to Kisumu High Court and that the Respondent did not move the court to make transfer orders.
8. Counsel, further, submitted that the Applicant has not demonstrated this court acted erroneously or that the court had no powers to transfer the case. He submitted that the Applicant has not demonstrated that the Applicant will suffer prejudice and that the Application dated 20/1/2025 is not merited and ought to be dismissed.



## Determination

9. I have read and considered the Application under determination and the Supporting Affidavit as well as the Replying Affidavit. I have also read the court file records which show that the Respondent in the current application filed Misc. Civil Application No. E1197 of 2024 dated 6<sup>th</sup> May 2024 seeking transfer of Milimani CMCC No. E9918 of 2021: [KINGARA GARDENS LIMITED VS KENYAN ALLIANCE INSURANCE COMPANY LIMITED](#) to Kisumu High Court for determination. The main reason advanced in support of that application was that the claim was for Kshs 23,469,721 which was higher than the pecuniary jurisdiction of the Chief Magistrate.
10. The matter was placed before the Judge (Meoli, J) on 5/12/2024. The records do not indicate that any of the parties were present and therefore it is correct for this Court to take the view that the Judge acted suo moto. Prayer one (1) of that application was granted with the result that Milimani CMCC No. E9918 of 2021 was to be transferred to Kisumu High Court for determination. The Judge (Meoli, J) reasoned, in granting that order, that the subject matter of the suit, Kingara Gardens Limited, is situated at Kisumu. The judge, further, directed that the matter be placed before the Presiding Judge in Kisumu for mention on 29/01/2025.
11. The order transferring the matter to Kisumu High Court, as argued by the Applicant, was erroneously granted.
12. Section 18 of the [Civil Procedure Act](#) empowers the High Court to withdraw and transfer a case instituted in the subordinate court. It provides as follows:
  18. Power of High Court to withdraw and transfer case instituted in subordinate court
    - (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
13. The record in the court file show that there was a pending application, a Notice of Motion dated 6<sup>th</sup> May 2024, seeking to transfer the case filed in the Milimani Chief Magistrate’s Court to the High Court at Kisumu for hearing and determination. This Court (Meoli, J), suo moto ordered the transfer of the matter to Kisumu High Court and directed to that the matter be placed before the Presiding Judge at Kisumu High Court for directions on 29<sup>th</sup> January 2025.
14. While I note that there was a pending Motion seeking the prayers granted by the Court, the parties were not present. Section 18 of the CPA allows the Court to be moved by the parties or to act suo



moto and transfer a matter. Court, so acting, cannot be said to have acted erroneously as claimed by the Applicant.

15. The Applicant has not demonstrated what prejudice it is likely to suffer because of the transfer. The Respondent, who is the Plaintiff in the main suit, is in Kisumu and therefore, Kisumu High Court, given the pecuniary jurisdiction, is the convenient court to handle this matter. Besides, this is the era of virtual proceedings and any party, with directions of the court, can be heard virtually from any corner of Kenya and the world.
16. My considered view, in this Motion, is that the Applicant will not suffer prejudice by having this matter transferred to Kisumu High Court. Further, it is my considered view, that the Court (Meoli, J) did not act erroneously in granting that order of transfer. The law allows the Court to act suo moto.
17. Consequently, the Motion dated January 20, 2025 lacks merit and is hereby dismissed with costs to the Respondent.
18. In order to comply with the orders of the court, this suit shall be mentioned before the Presiding Judge, Kisumu High Court, on April 24, 2025 for directions. Orders shall be issued accordingly.

**DATED, SIGNED AND DELIVERED THIS 26<sup>TH</sup> MARCH 2025.**

**S. N. MUTUKU**

**JUDGE**

In the presence of:

Mr. Mwanzia holding brief for Mr. Karanja for the Applicant.

Mr. Ariho for the Respondent.

