



Aipca Dandora Creative Centre v Ndumbi & 77 others (Miscellaneous Civil Application E206 of 2024) [2025] KEHC 4848 (KLR) (25 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4848 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CIVIL APPLICATION E206 OF 2024**

JRA WANANDA, J

APRIL 25, 2025

BETWEEN

AIPCA DANDORA CREATIVE CENTRE APPLICANT

AND

STEPHEN SUNGUTI NDUMBI & 77 OTHERS RESPONDENT

RULING

1. By the Notice of Motion amended on 27/09/2024 (initially dated 5/08/2024) and filed through Messrs Diro Advocates LLP, the Applicant seeks orders as follows:
 - i. [.....] spent
 - ii. That this Honourable Court be pleased to stay proceedings in the Small Claims No E775 to E781 and E784 of 2023; E801 to E853 of 2023; E1044 to E1045 of 2023; E1176 to E1181 of 2023; 1187 to 1188 of 2023; 1193 to 1194 of 2023; E027 of 2024; E048 to E050 of 2024; E118 of 2024, E124 of 2024 E126 of 2024 and E377 of 2024 emanating from the accident on 21/08/2023 involving motor vehicle KCG XXXX against the Applicant herein to the Chief Magistrate's Court at Eldoret.
 - iii. That this Honourable Court be pleased to stay proceedings in the instant suit pending the finalization of the investigation by the Insurance Fraud Investigation Unit and Parity Loss Assessors & Consultants Ltd.
 - iv. That this Honourable Court be pleased to transfer proceedings in the Small Claims Court Claim No E776 of 2023 and Eldoret Small Claims No E775 to E781 and E784 of 2023; E801 to E853 of 2023; E1044 to E1045 of 2023; E1176 to E1181 of 2023; 1187 to 1188 of 2023; 1193 to 1194 of 2023; E027 of 2024; E048 to E050 of 2024; E118 of 2024, E124 of 2024 E126 of 2024 and E377 of 2024 emanating from the accident on 21/08/2023 involving motor vehicle KCG XXXX against the Applicant herein to the Chief Magistrate's Court at Eldoret.



- v. That leave be granted to file an additional list of witnesses and documents upon the completion of the investigation.
 - vi. That the orders herein apply to Eldoret Small Claims No E775 to E781 and E784 of 2023; E801 to E853 of 2023; E1044 to E1045 of 2023; El 176 to El 181 of 2023; 1187 to 1188 of 2023; 1193 to 1194 of 2023; E027 of 2024; E048 to E050 of 2024; El18 of 2024, El24 of 2024 El26 of 2024 and E377 of 2024 emanating from the accident on 21/08/2023 involving motor vehicle KCG XXXX against the Applicant herein.
 - vii. That the Honourable Court be pleased to make any further orders or directions as it may deem fit and just in the circumstances; and
 - viii. Costs for the Application be provided for.
2. The Application is supported by the Affidavit sworn by one Phyllis M Mutua, who described herself as an officer at CIC General Insurance, the Applicant's Insurer. She deponed that the Applicant reported the incident the subject of this suit and filled a Motor Vehicle Claim, that the Applicant reported that the motor vehicle had a capacity of 51 passengers but the Applicant (insured) has since been served with more than 65 claims all filed at the Small Claims Court. She deponed further that the Insurer lodged an investigation and Preliminary Investigations have indicated that there are fictitious claims, and that the Insurer reported the claims to the DCI-Insurance Fraud Investigation Unit. According to her, the Preliminary Investigation concluded that there existed acts of commissions and omission resulting in collusion to file suspected fraudulent suits and that they forwarded the Report for further action as they finalized the investigation and to possibly prefer criminal charges against the parties involved.
 3. She deponed further that 5 people were arrested and criminal cases are ongoing in Eldoret Criminal Case No. 831/164/2024 and 861/230/2024; CF No. E799/2024. She deponed that the Claimants in Eldoret SCC El181 of 2023 Patrick Wanjala; El177 of 2023 Richard Kulova coming up for hearing on 15th August, 2024 are accused in Eldoret Criminal Case E799 of 2024 and there are ongoing investigations to date and efforts to make further arrests. She stated further that the Insurer has since followed up on the final investigations however, the same is outside its control as the DCI-Insurance Fraud Investigation Unit is an independent governmental unit thus the Applicant humbly seeks that the suits be urgently stayed pending determination of the instant Application. She reiterated that there are duplicate claims that have been filed by Claimants bearing the same and/or similar names at the Eldoret Small Claims Court.
 4. She then deponed that the Applicant applied for stay of proceedings at the Small Claims Court, and that Court granted only 14 days stay in light of the timelines fixed under Section 34 of the Small Claims Act, that the Court will be adjudicating on a nullity if the suits are not stayed pending investigations, that the Insurer stands to suffer irreparable financial loss if the orders sought are not granted and that the Respondents will not be prejudiced.
 5. Regarding opposition to the Application, I have only come across the Replying Affidavit sworn on 17/10/2024 by one Stephen Mutinye, who appears in the Amended Application as the 16th Respondent. The Affidavit is filed through Messrs Mathai & Co. Advocates.
 6. The deponent urged that the Application is fatally defective, that on 26/09/2023, he instituted a suit against the Applicant, namely, Small Claim No. E809 of 2023, the Applicant was served with the Claim on 22/01/2024 upon which it filed an Application for stay of proceedings, the main reason being that there was a suspicious number of claims and the Applicants' insurer had launched investigations which revealed fictitious claims, including his, and that the Insurer had reported the



matter to the Insurance Fraud Unit. He deponed further that he responded to the Application and upon the Applicant's request, he was cross-examined and the Court rendered a Ruling on 20/05/0223 on the Application for stay of proceedings giving the Applicant 14 days to conclude Investigations and the parties fixed a hearing date by consent. According to him therefore, the instant Application is Res Judicata. He deponed further that to his knowledge, the Anti-Fraud Unit attached to the DCI conducted investigations and tendered their Report to the Applicant's Insurer, that the claims that were filed by Messrs Mathai Maina & Co. Advocates were found to be genuine and no action was taken against any of the persons represented by the said firm. He urged that the Applicant is on a spree of interfering with the Claims by sending their agents to the Claimant with promises of settling the matters out of Court without involving the Advocates and that he has been approached by one such agent. He contended that the Applicant's intention is to delay the matters further contrary to the provisions of Section 34 of the Small Claims Act in order to make the Claimants lose interest in the cases, and that once the DCI conducted its investigations being the arm of the Government, it cannot be that an individual can conduct more thorough investigations than the Government. In conclusion, he deponed that pursuant to Rule 34 of the Small Claims Court Rules, and also Section 13(3) of the Small Claims Act, this Court lacks the capacity to transfer the matter to the Chief Magistrates' Court as sought by the Applicant.

Hearing of the Application

7. As aforesaid, only Messrs Mathai & Co. Advocates filed a Response herein. The firm of Messrs Omusundi & Co. Law Firm LLP had also initially come on record for 10 of the Respondents but they do not seem to have attended Court any further. I have also come across an Application filed by the same law firm seeking leave to cease acting as a result of lack of instructions.
8. Be that as it may, there is an Affidavit of Service on record sworn by one Augustine Nzive on 6/08/2024 indicating that the law firms acting for the Respondents in the suits before the Small Claims Court were served via email. These law firms are named as Mathai Maina & Co., Mogire Nyamwaya & Co., Morgan Omusundi Law Firm LLP, G.K. Okara Advocates, and O.J. Advocates LLP. My understanding is that all the Respondents are represented by the said law firms. In any case, it is unlikely that the Respondents and/or their Counsel would be unaware of the existence of this suit since an interim order of stay of proceedings was issued at some point. I also notice that while in its initial Notice of Appointment, Messrs Mathai Maina & Co., mentioned only the said Stephen Musinye as the Respondent they were representing, in a subsequent Notice of Appointment by the same firm, no specific client is named but the term used is "the Respondents". This therefore indicates that the law firm has now taken over representation for all the Respondents. The foregoing being the state of the Record, I proceeded to give directions on the hearing of the Application.
9. The Application was canvassed by way of written submissions. The Applicant filed Submissions dated 24/10/2024 through the firm of Messrs Diro Advocates LLP whereas the Respondents filed submissions dated 19/11/2024 through the firm of Messrs Mathai Maina & Co. Advocates.

Applicant's Submissions

10. Counsel for the Applicant reiterated that the Applicant's motor vehicle had a capacity of 51 passengers and that over 60 claims had been brought against it as confirmed by the initial Investigations Report exhibited, that the list availed to the Applicant did not contain some of the names of the Claimants and that the Preliminary Investigations Report revealed that some of the documents are not authentic.
11. She also reiterated that the Insurance Fraud Investigation Unit-DCI established that 17 claims were filed on fraudulent claims and that the Report states that the DCI team will investigate further and



refer charges against the culprits, that 5 people were arrested and criminal cases preferred, and that Investigations are still ongoing and have been taxing as it involves foreigners travelling to Uganda. On the Court's power to grant orders for stay of proceedings, Counsel cited the case of Global tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000 and submitted that the matters are investigated to conclusion as the Court will be engaging in a nullity in the event the Court proceeds to adjudicate on matters bearing the same parties and that it is in the interests of justice that a government expert Report be filed by the DCI-Insurance Fraud Investigation Unit which will be impartial being a governmental office.

12. She submitted further that the Applicant has brought the Application expeditiously and, that the grounds necessitating the request for stay of proceedings are outside its control as the matter is being investigated by the DCI. She urged that the Applicant attempted to verify the identities of the Claimants by sending them for second medical examinations, and one such matter was Eldoret Small Claims E827 of 2023 filed by one Edward Nabuwla and also Eldoret Small Claims E048 of 2023 also filed by the same Edward Nabuwla where the Claimant in Eldoret Small Claims E827 of 2023 E827 appeared for the 2nd medical examination and a medical Report supplied but that as evidenced by the multiple suits and the Investigations Report, the said Edward Nabuwla stated that he had not instructed any Advocate which puts to question the identity of the Claimant in the particular suit and in all the others.
13. She urged that the suits would benefit from the concluded DCI investigations by helping to verify the correct identity of the Claimants and therefore assist the Court in establishing which Claimants are legitimate and which ones are fraudulent. She cited the case of Kenya Wildlife Service v James Mutembei [2019] eKLR and submitted that the instant circumstances are "exceptional", that the Applicant has approached the Court with clean hands as per the case of Port Florence Community Health Care v Crown Health Care Limited (2022) eKLR and that the Applicant stands to suffer irreparable damage if a Judgment is entered in duplicate suits filed by Claimants bearing the same name. On the prayer for transfer of the suits to the Chief Magistrate's Court, she cited what she alleged to be the complexity and nature of the matters that necessitate the transfer.
14. She also cited Section 18 of the *Civil Procedure Act*, and on this Court's power to transfer suits, she cited Article 165 of *the Constitution* and also the strict 60 days hearing and 3 days delivery of Judgment timelines stipulated in Section 34 of the Small Claims Act. She urged that given such strict timelines, the matters are unsuited given the number of witnesses required to prove each parties' case and the complexity of the technical reports to be adduced by the opposing parties which include medical reports and investigations Report by both government experts and privately contracted experts, that the Record will also reveal that the documents produced to be marked as exhibits are exorbitant and require extensive manpower to consider and analyze. She cited the case of David Kabungu Vs Zikarenga HCCC No. 36 of 1995 and also the case of Hangzhou Agrochemicals Industries Ltd. Vs Panda flowers Ltd [2012] eKLR and urged that the Applicant and indeed all parties will suffer undue hardship at trial given the nature and multiplicity of the suits as it stands. In conclusion, Counsel urged that it is in the interest of justice that the matters be transferred to the Chief Magistrate's Court where pre-trial conference and presentation of various technical documents can be conducted to allow for all the issues in dispute to be conclusively dealt with at the trial.

Respondents' Submissions

15. Counsel for the Respondents, although he acknowledged the High Court's supervisory powers under Article 165(6) of *the Constitution*, he pointed out that although the Applicant's basis for invoking the jurisdiction of the Court is that the proceedings in the lower Court are marred with irregularities



that have occasioned injustice, such supervisory jurisdiction should be exercised sparingly and only in exceptional circumstances. He cited the case of Alice Sisina -Vs- Land Registrar Kajiado and Another (2015) eKLR, the case of Republic vs Chief Magistrates Court at Milimani Law Courts; Director of Public Prosecutions & 2 others (interested parties); Ex-parte Application: Pravin Galot (2020) eKLR, the case of Dalmia Jain Airways Ltd, v Sukumar Mukherise, and also the case of National Social Security Fund Vs Sokomonia Ltd & Another (2021) eKLR. He submitted that the Applicant has not made any Application before the trial Court to file further documents and/or witness statements, there is no order that has been made by the Adjudicator in the Small claims Court that is marred with irregularities to occasion an injustice to the Applicant and therefore, this Court cannot give directions on matters that it is not seized of and that in the circumstances, it cannot interfere with proceedings before the Small Claims Court even before the Applicant has made that Application before the Adjudicator.

16. Counsel reiterated that a similar Application was made by the Applicant at the Small Claims Court which was allowed by the Adjudicator, investigations were conducted and those who were found to have instituted fraudulent claims were charged with criminal offences, it was found that some of the Claimants were indeed involved in the subject accident and that no action was taken against the law firm that filed those matters, precisely, the firm of Mathai Maina & Co. He submitted that other than a few new matters which were not part of the matters that were investigated, the rest of the claims filed by Mathai Maina & Co. were subjected to investigations and verified to be genuine hence the prayer to stay the proceedings is baseless. He urged that stay of proceedings is a grave matter to be entertained only in most deserving cases as it impacts the right to expeditious trial. He cited the case of Kenya Wildlife Service vs James Mutembei (2019) eKLR and the case of Global tours & Travels Limited; Nairobi (Winding up cause No 43 of 2000). He urged each case must depend on its own facts and reiterated that the prayers that were sought by the Applicant at the Small Claims Court are similar to those sought the current Application, word by word, and the Reliefs sought are the same.
17. He then quoted relevant portions of the Ruling made by the Adjudicator, Hon. Otieno, and submitted that it is apparent therefrom, that the investigations commenced in January 2024 and as at the time that Hon. Otieno was delivering his Ruling, 5 months had already lapsed, that in view of the provisions of Section 34 of the *Small Claims Court Act*, the matter ought to have been concluded within 60 days and in view thereof, Hon. Otieno gave the Applicants 14 days for the investigations to be concluded after which the matters were to be fixed for hearing, that the order was to apply to all the related matters and the Applicant was given leave to file further List of Documents and Witness Statements after the investigations had been concluded. He urged that that since the Applicant is a chronic litigant, it decided to move this Court with the hope of further delaying the proceedings pending before Small Claims Court by obtaining stay of proceedings knowing very well that investigations were concluded and criminal proceeding commenced on those Claimants who were found to have filed fictitious claims and that the time when this instant Application was filed is when the intended matter before the Small Claims Court had been fixed for hearing. Counsel reiterated that the Application is Res Judicata and cited Section 7 of the *Civil Procedure Act*, and also the definition set out in the Black's Dictionary, 11th Edition. He also cited the case of Christopher Kenyariri Vs Salama Beach (2017) eKLR, and the case of Omondi v National Bank of Kenya Limited and Others [2001] EA 177.
18. Counsel then urged that under Section 42(2) of the *Small Claims Court Act*, that Court has powers to issue orders of stay, and Section 12 gives it jurisdiction to entertain matters before it. On the prayer for transfer of the suits, Counsel cited the case of Gakia Kimani Kiarie vs Peter Kimani Kiramba [202] eKLR and submitted that the Applicant has not given any reason why the Claims should be transferred to the Chief Magistrate's Court. He cited Rule 34 of the Small Claims Court Rules and submitted that thereunder, it is only the Respondent who can apply for transfer from the Small Claims Court



and under Section 13(3), the Court that can exercise the powers to transfer proceedings to a Small Claims Court is a higher Court but even so, such higher Court can only transfer the matter to the Small Claims Court, and not from the Small Claims Court to another Court. He cited the case of Hangzhou Agrochemical (supra) and also the case of David Karimi Ngaricha -Vs- Kenya Industrial Estates Limited & (2021) eKLR and submitted that where a claim is certain from inception and the Claimant files it before the Small Claims Court, he cannot at a later stage turn around and allege that due to the change in circumstances, the matter ought to be heard by another Court and that in such event, his only option is to withdraw the Claim and file a fresh one before the Court he believes has jurisdiction.

Determination

19. The issues that arise for determination herein are the following:
 - i. Whether an order of stay of the proceedings pending before the Small Claims Court should be issued pending conclusion of the investigations on whether the said claims are fraudulent.
 - ii. Whether the proceedings pending before the Small Claims Court should be transferred to the Chief Magistrate's Court.
20. I will now proceed to analyze and answer the said issues.

i. Stay of Proceedings

21. Regarding stay of proceedings, it is trite law that when faced with an Application of such nature, the Court is required to exercise its discretion but which discretion must be exercised after due consideration of the merits of the case and the likely effect on the ends of justice. As usual, exercise of discretion must be grounded on judicious principles. On this issue, Hon. Justice Ringera J in Global tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000 held as follows:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is so, on what terms it should be granted. In deciding whether to order a stay, the Court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

22. Further, F. Gikonyo J in the case of Christopher Ndolo Mutuku & Another vs CFC Stanbic Bank Limited (2015) eKLR, stated as follows:

“..... what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice ...”



23. Similarly, Halsbury's Law of England, 4th Edition, Vol. 37 page 330 and 332 gives guidelines on the threshold to be met in Applications for stay of proceedings as follows:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.

This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.

It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

24. Further, in *Kenya Wildlife Services v Jane Mutembi* (2019) eKLR, again, Hon. Justice F. Gikonyo held that:

“stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall right to fair trial. Therefore, the test for stay of proceedings is high and stringent.”

25. In line with the foregoing guidelines, it is generally agreed that in an Application for grant of stay of proceedings, the matters that the Court must satisfy itself on are the following: (a) the Applicant has established a prima facie arguable case; (b) the Application was filed expeditiously; and (c) the Applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.
26. The Respondents have argued that a similar Application as the one herein was made by the Applicant before the Small Claims Court and which was allowed by the Adjudicator and stay of proceedings granted for 14 days. The Respondents further stated that investigations were conducted and some of the people who were found to have created the fraudulent or fictitious claims were charged with criminal offences. The Respondents attached copies of the Application and the Ruling dated 20/05/2024 delivered by Hon. R. Otieno. The Applicant, save for simply casually stating, in passing, in its Affidavit in support to the Application, that it did apply for stay of proceedings before the Small Claims Court and which granted a 14 days stay of proceedings, the Applicant did not expressly disclose that it had indeed filed a similar word by word Application before the Small Claims Court and which was heard and granted on merits culminating into the said formal Ruling.
27. The Respondent having produced copies of the Application filed by the Applicant before the Small Claims Court and the Ruling arising therefrom, and having perused the same, I agree with the Respondents that save for the prayer for transfer of the suits, the Application filed by the Applicant at the Small Claims Court and which was determined, is a word-by-word replica of the instant Application. There is therefore merit in the Respondents' argument that, in view of the provisions of Section 7 of the *Civil Procedure Act*, the instant Application is Res Judicata.



28. Apart from the Respondents stating that investigations were conducted by the police and some of the people found to have created the fraudulent claims charged with criminal offences, the Respondents have also submitted that the investigations confirmed that some of the Claimants were genuine as the concerned Claimants were indeed involved in the subject accident and that no action was taken against the law firm Mathai Maina & Co. which had filed those matters. On the allegation of prosecution for criminal offences, the Respondents have exhibited the copies of the charge sheets.
29. Both parties have also exhibited a copy of the Initial Report dated 27/03/2024 from the National Police Service-Directorate of Criminal Investigations-Insurance Fraud Investigation Unit which is addressed to the Applicant's Insurer's Senior Manager, Fraud Prevention & Investigation. The Report made findings that, inter alia, only 51 passengers were travelling in the subject motor vehicle at the time of the accident and not 67 as per the suits filed at the Small Claims Court. A further finding was that there was a conspiracy to defraud the Applicant due to the fact that 17 of the suits were proven to be supported by suspected forged documents. It was also found that witness accounts by 5 victims of the accident indicated that they did not give any instructions to the Advocates on record, which demonstrates that the suits before Court for the 5 alleged Claimants were instituted by people personating to be the genuine victims. All the suspected fraudulent claims flagged as above were expressly identified and mentioned in the body of the Report and they are therefore now well known. The Report then in the end states as follows:
- “Based on the above findings, we forward this preliminary investigation report for your further action as our team seek to finalize the investigation and possibly prefer criminal charges against the parties involved in the violation of the law”
30. The charge sheets exhibited by the Respondents, all indicating that the accused persons were all arrested on 3/04/2024, I presume that such arrests were a direct consequence of the findings made in the Police Investigations Report.
31. Reading the Ruling of Hon. Otieno, I also agree with the Respondents that it is apparent therefrom that the investigations commenced way back in January 2024 and as at the date of the Ruling in May 2024, 5 months had already lapsed. This perhaps explains why he gave only 14 days for the investigations to be concluded. It is now approaching 1 ½ years later and no further update from the police has been presented to this Court to indicate that any further investigations are still ongoing and if so, the status thereof
32. Noting that Section 34 of the *Small Claims Court Act*, stipulates a strict 60 days' timeline for disposal of claims filed before it, my view is that it will be a breach of the spirit behind the enactment of that statute to further hold the cases in abeyance indefinitely and especially when the Court has not been presented with any update from the police on whether any further investigations are even still ongoing and if, so the status thereof. The suspicious claims having now been identified and flagged; I find it unfair to continue “punishing” the rest of the Claimants whose cases have not been fingered by continuing to hold them in abeyance. The suspicious claims being now known, it has not been alleged that the Adjudicator at the Small claims Court would not be able to deal with them in the appropriate matter once brought to his attention. Even after the suits are heard and perhaps Judgment entered, nothing would stop the Applicant from applying for stay of execution thereof should any further relevant findings be made by the Investigators subsequently.
33. As aforesaid, the firm of Morgan Omusundi Law Firm LLP has already filed an Application seeking to cease acting for about 10 Claimants on account of “lack of instructions”. Although the Application has not been heard, from the language employed in the Supporting Affidavit thereto, it appears that



the Claimants have “disappeared into thin air”. Considering the 60 days’ timeline applicable at the Small Claims Court, the claims, if still unprosecuted within that timeline, would be expected to be swiftly terminated by that Court. I cannot speculate on the reasons for the “lack of instructions” but it appears that a good number of the claims are already falling by the wayside by themselves. Regarding the Claimants whose claims have already been flagged as fraudulent and suspects charged with criminal offences, I highly doubt whether they will even attempt to show up in Court to prosecute the cases. Even if they do, I am certain that the Adjudicator will appropriately deal with such claims once the Applicant’s witnesses or Investigators testify. The fraudulent claims may have now been extinguished.

34. The Respondents have also argued that as per the Ruling of Hon. Otieno, upon lapse of the 14 days, the matters were to be fixed for hearing, and the Applicant was given leave to file further List of Documents and Witness Statements and the time when this instant Application was filed is when the suits before the Small Claims Court had been fixed for hearing. The Applicant having not controverted these matters, I agree with the Respondents that it would be unprocedural and irregular, and perhaps even an abuse of the Court process for the Applicant to side-step the Small Claims Court, and purport to seek refuge in this higher Court yet the Small Claims Court had already given proper and lawful directions.
35. to entertain such practice would amount to this Court micro-managing the Small Claims Court which is not, and cannot have been, the intention of the High Court supervisory powers over subordinate Courts.
36. As aforesaid, the power to stay proceedings is one which ought to be exercised sparingly, and only in “exceptional” cases. In this case, I believe I have said enough to indicate that in my considered view, no such “exceptional” case has been demonstrated. The Applicant has failed to establish sufficient cause to the satisfaction of the Court that it is in the interest of justice to grant the order for stay of proceedings. Accordingly, I decline to grant the same.

ii. Transfer of Suits

37. On the prayer for transfer of the suits, the Applicant’s basis seems to be that considering the strict 60 days disposal of suits timeline stipulated in the *Small Claims Court Act*, the matters are unsuitable to be heard before the Small Claims Court, given the number of witnesses required to prove each parties’ case and the complexity of the technical reports to be adduced by the opposing parties which include medical reports and investigations Report by both government experts and privately contracted experts, and that the documents to be produced as exhibits are exorbitant and require extensive manpower to consider and analyze
38. The jurisdiction of the High Court to transfer suits from one Court to another is provided under Section 18 of the *Civil Procedure Act* 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) 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.”

39. In the Ugandan High Court case of David Kabungu v Zikarenga & 4 others, Kampala HCCS No. 36 of 1995, the Judge had the following to say on the circumstances under which the order to transfer a suit may be granted:

“Section 18(1) of the [Civil Procedure Act](#) gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. The burden lies on the Applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice or the suit has been filed in a particular court for the purposes of working injustice. What the court has to consider is whether the Applicant has made a case to justify it in closing doors of the court on which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction 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 out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are balance of convenience, questions of expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication must be refused. Want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court from which transfer is sought has no jurisdiction to try the case, transfer could be refused

40. In this case, I have already found that the “suspicious” claims having now been identified and flagged. I have also found that it has not been alleged that the Adjudicator at the Small claims Court will not be capable of “weeding out” such claims in the appropriate manner once the relevant evidence is presented before him. Although Counsel for the Applicant has alleged that the cases are “complex” and involve voluminous documentation, and will require extensive manpower to consider and analyze, those allegations have not in any way been substantiated. From my assessment, the claims are ordinary “running down” accident personal injury cases which, to my mind, raise no complex litigation at all. Apart from mere allegations, no attempt was made to demonstrate any such complexity in any event. Even the alleged “voluminous” documentation has not been demonstrated. Which documents will require alleged “extensive manpower to consider and analyze” have also not been identified. With due respect, the allegations made, being just that, are not sufficient under Section 18 of the [Civil Procedure Act](#) as grounds for transferring a suit. The matters alleged are issues that the Adjudicator presiding over



the Small Claims Court has the full mandate and competence to deal with, give directions on, and resolve.

41. In the circumstances, I am not at all persuaded that the “balance of convenience, questions of expenses, interest of justice and possibilities to undue hardship” as set out in the case of David Kabungu v Zikarenga (supra) favours transferring the suits to from the Small Claims Court to the Chief Magistrate’s Court.

Final Orders

42. In light of the foregoing, the Applicant’s Notice of Motion amended on 27/09/2024, and by extension, these entire proceedings, is hereby dismissed with costs to only the 16th Respondent, Stephen Mutinye.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 25TH DAY of APRIL 2025

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Ms. Ameso h/b for Kuria for the Applicant

Rotich h/b for the Respondent

C/A Brian Kimathi

