



**Thuo v Nyakindi & another (Miscellaneous Civil Application  
E1117 of 2024) [2025] KEHC 6900 (KLR) (Civ) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6900 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION E1117 OF 2024**

**NW SIFUNA, J**

**MAY 28, 2025**

**BETWEEN**

**CATHERINE WAMBUI THUO ..... APPLICANT**

**AND**

**MOGAKA NYACHAE NYAKINDI ..... 1<sup>ST</sup> RESPONDENT**

**PAUL NYAKUNDI NYACHIEO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is on this Application that is the Motion dated 22<sup>nd</sup> November 2024. The same which has cited Sections 1A, 1B, 3A, 17 and 18 of the *Civil Procedure Act* Cap 21 Laws of Kenya, is seeking to transfer Nairobi CMCC No. 691 of 2018, from the Chief Magistrates' Court to the Small Claims Court, for hearing and disposal. The Application is supported by the Applicant's Supporting Affidavit sworn on 22<sup>nd</sup> November 2024.
2. This Application is based on the following grounds stated in it:
  - a. That this suit is seeking judgment for the sum of Ksh 695,750=, which falls within the pecuniary jurisdictional limits of the Small Claims Court.
  - b. That the dispute in this case is a simple material damage claim, which is appropriate for determination in the Small Claims Court, where claims of a similar nature are heard in a more expeditious and cost-effective manner.
  - c. That transferring this case to the Small Claims Court would promote the efficient resolution of the dispute and reduce unnecessary legal costs and delays, given the nature of the claim and the relatively small amount involved.



- d. That the expeditious hearing and disposal of this matter will serve to reduce backlog and deliver justice expeditiously and the Respondents will not be prejudiced.
  - e. That it is in the interest of fairness and justice that the application be heard expeditiously and the orders prayed for be granted.
3. The respondents have through the Response they have filed, opposed the Application on the ground that this suit was filed before the *Small Claims Act* (Cap 10A of the Laws of Kenya) was enacted, hence that the *Act* cannot apply retrospectively. In rejoinder, the Applicant has maintained that Section 13 of that *Act* allows for the transfer of suits from the Small Claims Court, and that the only condition that would hinder transfer, is the pecuniary jurisdiction.

### **Analysis and Determination**

4. The singular issue for determination on this Application, is whether this Court should transfer the subject suit (Namely Nairobi CMCC No. 691 of 2018) from the Magistrate’s Court to the Small Claims Court as prayed for in this Application.
5. This Court has the power to transfer a suit from itself or any subordinate court, to the Small Claims Court. That transfer power is by dire of Section 18 of the *Civil Procedure Act*, as read together with Section 13 (3) of the *Small Claims Court Act* Cap 10A of the Law of Kenya. The latter states as follows:
 

“Subject to Section 12(3), a higher court may transfer a claim to the Small Claims Court.”
6. The jurisdiction of the Magistrate’s Court and that of the Small Claims’ Court are, in my considered view, not only concurrent but also overlapping. This is in the sense that, the jurisdiction of one does not oust jurisdiction from the other. The Small Claims Court was created to off-load the filing of matters in the Magistrate’s court. This it does through: the screening of cases, an expedited trial process, as well as simplified court proceedings.
7. Of the two courts (the Magistrate’s Court and the Small Claims Court), I would say that, they like Siamese twins, are conjoined at the hip. Even adjudicators presiding in the Small Claims Court, are Magistrates.
8. Notably, also, the subject matter of the suit the subject of this transfer Application, is one over which both the Small Claims Court to which the Applicant seeks to transfer the suit to, and the Magistrate’s Court from which she intends to transfer that suit from, have concurrent jurisdiction.
9. Under Section 1A of the *Civil Procedure Act*, this Court like other civil courts, has the duty to promote the overriding the objective of the *Act*. Which overriding objective is to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. The transfer of suits form one court to another, is one such avenue of fulfilling that overriding objective.
10. I need to emphasize that the Small Claims Court was established to support, augment, supplement and complement (rather than to substitute), the Magistrate’s Courts. Neither was the Small Courts Act enacted to oust the jurisdiction of the Magistrate’s Courts.
11. For the foregoing reasons, this Application is found to have merit, hence is hereby allowed. In terms that Nairobi CMCC No. 691 of 2018 that was filed in the Chief Magistrate’s Court and is currently pending there, is hereby transferred to the Small Claims Court at Nairobi, for hearing and disposal. Before I sign off, I commend both parties for the jurisprudentially enriching rival arguments at the oral hearing of this Application. For reason of that enterprise, each party shall bear its own costs of the Application.



**DATED AND DELIVERED AT NAIROBI ON THIS 28<sup>TH</sup> DAY OF MAY 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

