



REPUBLIC OF KENYA



**KENYA LAW**  
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**Diamond Trust Bank Kenya Limited v Thurania (Commercial Miscellaneous Application E611 of 2025) [2025] KEHC 9189 (KLR) (Commercial and Tax) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9189 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**COMMERCIAL AND TAX**  
**COMMERCIAL MISCELLANEOUS APPLICATION E611 OF 2025**  
**BK NJOROGE, J**  
**JUNE 26, 2025**

**BETWEEN**

**DIAMOND TRUST BANK KENYA LIMITED ..... APPLICANT**

**AND**

**EDWIN MUTEITHIA THURANIRA ..... RESPONDENT**

**RULING**

1. This Ruling relates to the Applicant's Notice of Motion dated 13<sup>th</sup> June, 2025, brought pursuant to Sections 1A, 1B, 3A, 11, and 18(1)(a) of the *Civil Procedure Act*, 2010, Order 31 of the *Civil Procedure Rules, 2010*, and Articles 50 and 165(3)(a) of the *Constitution* of Kenya, 2010.

**Background facts**

2. The Applicant has moved this Court seeking the following reliefs
  - a. That this Honourable Court be pleased to grant the Applicant/Intended Plaintiff leave to file a suit against the Respondent/Intended Defendant in the Chief Magistrates Court at Milimani.
  - b. That the Honourable Court be pleased to grant such other orders as may be just in the circumstances and incidental thereto.
  - c. That costs of this Application be provided for.
3. This application is supported by the Affidavit of Joyce Omalla. She depones that the Respondent applied for a staff loan of Kshs. 1,200,000 from the Applicant. The loan was granted pursuant to a loan agreement dated 21<sup>st</sup> January, 2019. The agreement required repayment in sixty (60) equal monthly instalments through a payroll check-off arrangement. It was an express term of the agreement



that failure to honour any instalment would constitute a breach, rendering the entire loan amount immediately due and payable.

4. Ms. Omalla further depones that although the Respondent made several repayments during his employment, he failed to remit full instalments, resulting in default and penalties. Upon leaving employment, the Respondent failed to settle the outstanding balance, and the Applicant's efforts to secure payment were unsuccessful. The Respondent's total outstanding balance stands at Kenya Shillings Two Million Four Hundred and Ninety Thousand, Four Hundred and Sixteen and cents Thirty (Kshs.2,490,416.30).
5. Counsel for the Applicant acknowledges that while the loan agreement provides for legal proceedings to be instituted in the High Court's Commercial Division, the claim falls within the pecuniary jurisdiction of the Chief Magistrates Court. Given the legal and judicial policy favouring the filing of matters in the lowest competent Court and to promote efficient use of judicial resources, the Applicant seeks leave to file the intended suit in the Chief Magistrates Court. She affirms that the draft Complaint discloses triable issues with a high likelihood of success and that no prejudice will be suffered by the Respondent if the application is granted.

### **Issues for determination**

6. This Court has duly considered the Applicant's application and is of the view that a single issue arises for determination, namely:
  - a. Whether this Court should grant leave for the transfer of the intended suit from the Superior Court to the Subordinate Court.

### **Analysis**

7. This Court has the jurisdiction to transfer a suit either from the superior court to the subordinate court and vice versa. This is contained in Section 18 of the *Civil Procedure Act*, which 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.
    - (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.

8. From the foregoing, it is evident that the High Court—together with Courts of equal status—have the jurisdiction to transfer a suit either from itself to a subordinate court, or vice versa, where circumstances so warrant. The existence of this power is not in doubt and is well grounded in law.
9. In this regard, Section 7 of the *Magistrates' Courts Act* provides as follows:

A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed —

- (a) twenty million shillings, where the court is presided over by a chief magistrate;
- (b) fifteen million shillings, where the court is presided over by a senior principal magistrate;
- (c) ten million shillings, where the court is presided over by a principal magistrate;
- (d) seven million shillings, where the court is presided over by a senior resident magistrate; or
- (e) five million shillings, where the court is presided over by a resident magistrate.

**a. Whether this Court should grant leave for the transfer of the intended suit from the Superior Court to the Subordinate Court.**

10. It is evident from the foregoing that the Chief Magistrate's Court is vested with pecuniary jurisdiction to hear and determine civil claims whose subject matter does not exceed Kenya Shillings Twenty Million (Kshs. 20,000,000/=).
11. This Court in *Nyasimi v China Henan International Co-operation Group Co. Ltd* (Miscellaneous Suit E007 of 2022) [2023] KEELC 15736 (KLR) (22 February 2023) (Ruling) stated that:

“It will be observed that the above chain of authorities emphasise that for a suit to be capable of being transferred, it first needed to have been filed in a court of competent jurisdiction. This would mean that when the suit was filed, the court had jurisdiction, but circumstances changed so that the court now has no jurisdiction. A classical case is an instance where a Magistrates' Court station has a Chief Magistrate, who is subsequently transferred without replacement of a Magistrate of equal rank. A party would have filed suit, say for the sum of Kshs. 16,000,000/= in a court with jurisdiction, since the Chief Magistrate was available, but upon his transfer, and if there is no replacement, there would be no other Magistrate to hear the case because the next highest ranking officer, a Senior Principal Magistrate, would, pursuant to Section 7 of the Magistrates' Court Act, only hear a case with a maximum value of Kshs. 15,000,000/=. Thus for no fault of his own, the party will find himself without a Magistrate with jurisdiction to determine the suit yet when he filed it there was a court with jurisdiction to hear it. Following this school of thought, if one filed a suit seeking, say, kshs. 25,000,000/= in the subordinate court, he would not be entitled to an order of transfer of the suit because the Magistrates' Court had no jurisdiction in the first instance to hear such a case as it obviously exceeded the pecuniary limits of the court.”

12. Accordingly, while this Court is vested with unlimited original jurisdiction, it equally possesses the power to transfer a matter to a subordinate Court where the subject matter falls within that Court's



pecuniary competence. In the present case, given that the claim lies within the jurisdictional limits of the Chief Magistrate's Court, this Court finds it appropriate to grant the orders sought.

**Determination**

13. In the circumstances, leave is hereby granted to the Applicant to file the intended Plaint before the Chief Magistrates Court at Milimani.
14. There will be no orders as to the costs of this application.
15. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS 26<sup>th</sup> DAY OF JUNE 2025**

**NJOROGE BENJAMIN K**

**JUDGE**

In the presence of;

Miss Omalla for the Applicant.

Mr. Luyai – Court Assistant

