



Lukman Wholesalers Limited & another v Eliu (Miscellaneous Application E673 of 2024) [2025] KEHC 9013 (KLR) (Civ) (26 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9013 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION E673 OF 2024**

JN MULWA, J

JUNE 26, 2025

BETWEEN

LUKMAN WHOLESALERS LIMITED 1ST APPLICANT

GIDRAPH MWANGI MAINA 2ND APPLICANT

AND

SYOKAU ELIU RESPONDENT

RULING

1. Before the court is an application dated 14/07/2024 in which the Applicants seek in the main (3) that the court be pleased to order that Milimani Small Claims Court Case No. E6041 of 2023 be transferred to Milimani Commercial Magistrate's Court for proper adjudication and determination of the issues between the parties before a magistrate of competent jurisdiction.
2. It is premised under Sections 3, 3A, 18 of the *Civil Procedure Rules* and Article 50 of the *Constitution*, grounds found at its face and supporting affidavit of the 2nd Applicant Gidraph Mwangi Maina sworn on an even date.
3. The Applicant contestation is that the exparte judgment entered against them was so done without giving them an opportunity to be heard for lack of service of summons and pleadings and only learnt of the existence of the suit when their unnamed insurer with a bill of costs but instead of filing a motion to set aside what he terms as an irregular judgment before the said court, has opted to seek transfer of the suit to the Magistrates Court being apprehensive that the Small Claims Court would not be in a position to preside over the said matter for lack of jurisdiction.
4. The Respondent oppose the motion by a replying affidavit she swore on 5/09/2024 in which she argues that the motion is fatally defective, bad in law, misguided and an abuse of court process for reasons



that the impugned judgment has never been set aside, reviewed, varied or appealed against and so lacks merit.

5. The court has considered the motion, the affidavit in support and in opposition.
6. There is a judgment on record. It has not been set aside varied or renewed. There is infact a decree in place for Kshs. 171,587.21/= and a certificate of costs in the sum of Kshs. 46,800/=
7. The Applicants have not applied or invoked the court to set aside the judgment or vary the same. There is no appeal against the judgment.
8. As such, the court is lost as to how it can possibly transfer the suit, already concluded by entry of judgment and decree drawn to another court for adjudication when it has already been adjudicated and finalized, and pending execution of the decree only.
9. Clearly, the Applicants though represented by their chosen Advocates are blind to the law and procedure when a suit has been heard and judgment entered. It is not enough to site legal provisions as the applicants have done and fail to state the orders they seek succinctly against the facts deponed to in the supporting affidavit.
10. Further, a suit that has been concluded by a court of competent jurisdiction cannot be transferred to another court for re-litigation as it would be bad in law and vexatious.
11. Additionally, the Applicants have not stated or supported their arguments that the Small Claims Court lacks jurisdiction and if so in what manner. The court agrees fully with the respondent that the motion before the court lacks merit, is misplaced, misguided and therefore cannot see end of the day. It is therefore dismissed with costs to the Respondent.
12. The interim stay of execution orders issued by this court on 24/07/2024 are hereby vacated.
Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF JUNE, 2025

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JANET MULWA.

JUDGE

