



REPUBLIC OF KENYA



**Nderitu v Murai (Miscellaneous Civil Application E055 of 2025)
[2025] KEHC 11698 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11698 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E055 OF 2025**

FN MUCHEMI, J

JULY 31, 2025

BETWEEN

REGINA WANJIKU NDERITU PLAINTIFF

AND

EDWIN MWANGI MURAI DEFENDANT

RULING

Brief Facts

1. The application dated 4th April 2025 seeks for orders of transfer of Gatundu CMCC No. E042 of 2024 to the Chief Magistrate's Court to Thika Chief Magistrate's Court where the sister file CMCC No. E062 of 2024 Daniel Muraguri v Edwin Mwangi Murai is before Thika Magistrate's Court for trial and determination.
2. The respondent opposed the application and filed Grounds of Opposition dated 20th June 2025.

Applicant's Case

3. The applicant states that First Assurance Company Limited were the insurers of motor vehicle registration number KBR 466H owned by him at the time of the accident. The applicant avers that there is a similar suit involving him arising out of the same cause of action at Thika Magistrate's Court CMCC No. E062 of 2024 and the matters ought to be heard in the same court for administrative efficiency and reasonability to safeguard the courts from issuing conflicting judgments on the same set of facts.
4. The applicant argues that the magistrate's court in Thika has both the pecuniary and territorial jurisdiction to deal with CMCC No. E042 of 2024 pending before the magistrate's court at Gatundu. The applicant states that no prejudice will be suffered by the respondent if the orders sought are granted.



The Respondent's Case

5. Pursuant to Section 15 of the *Civil Procedure Act*, the respondent avers that a suit shall be instituted in a court within the local limits of whose jurisdiction the defendant resides or carries on business or personally works for gain and the cause of action wholly or in part arises. Further, the respondent states that the cause of action in the matter arose at Bristar area along Kenyatta road, which is within Kiambu County and still within the jurisdiction of Gatundu Law Courts. The respondent states that the matter in Thika CMCC No. E062 of 2024 proceeded for hearing on 28th May 2025 and it has a date for submissions yet she was not a party to the proceedings and she further believes that the same will be detrimental if the outcome of liability will be applied in her case. Further, the two matters are being handled by different counsels and thus she prays that she should not be bound by the outcome of liability in Thika CMCC No. E062 of 2024.
6. The respondent argues that since Thika CMCC No. E062 of 2024 has not been selected as a test suit, the judgment on liability shall not be binding in Gatundu CMCC No. E042 of 2024. Thus the application lacks merit and has been brought in bad faith.
7. The applicant filed a Supplementary Affidavit dated 23rd June 2025 and states that pursuant to Section 15 of the *Civil Procedure Act*, he lives in Thika and thus Thika Law Courts is the proper and most convenient forum for hearing and determination of the matter. Thus a transfer would not only serve the ends of justice but would also facilitate consolidation with Thika CMCC No. E062 of 2024, which arises from the same cause of action.
8. The applicant states that the matter in Thika CMCC No. E062 of 2024 did not proceed and was adjourned to 22nd July 2025 for mention and directions, upon determination of the instant application.
9. The applicant further argues that two different advocates are handling the respective plaintiffs' cases does not occasion any prejudice whatsoever. The applicant will still have the opportunity to prosecute her case fully. The applicant states that it is legally untenable to determine a test suit unless both matters are before the same court. The doctrine of first in time can only be applied once the files are consolidated and placed before the same judicial officer for proper consideration.
10. Directions were issued that parties put in written submissions. The record shows that the applicants complied with the courts directions on filing submissions. No compliance took place on the side of the respondent.

The Applicant's Submissions.

11. The applicant relies on Section 18(1) of the *Civil Procedure Act* and the cases of *Abedare Investments v Bernard Wachira & 5 Others* [2014] eKLR; *Kithita Ngeana v Mwaniki Kisume* [2018] eKLR and *George Mwongera Mwendameru v Loise Gakii* [2016] eKLR and submits that the instant court is clothed with the requisite jurisdiction to transfer the suit pending in Gatundu CMCC No. E042 of 2024 to Thika Law Court to be heard and determined alongside CMCC No. E062 of 2024.
12. The applicant further relies on the cases of *David Kabungu v Zikarenga & 4 Others* Kampala HCCS No. 36 of 1995 and *Hangzhou Agrochemicals Industries Ltd v Panda Flowers Ltd* [2012] eKLR and submits that he has met the threshold for transfer of cases and urges the court to do the same for purposes of enhancing the proper administration of justice.

The Law

13. Section 18 of the *Civil Procedure Act* provides:-



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.

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.

14. Section 18 of the Act empowers the High Court to withdraw and transfer a case instituted in a subordinate court on application of any of the parties or on its own motion. For the court to grant an order of transfer the applicant must satisfy the court as to the reasons for such orders.
15. This principle was enunciated in the Ugandan case of *David Kabungu v Zikarenga* HCCC No. 36 of 1995 which held:-

Section 18(1)(b) 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 the 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 a 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. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in 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 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 expense, interest of justice and possibilities of undue hardship, and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application 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 which transfer is sought has no jurisdiction to try the case, transfer would be refused.....

16. In the case of *Hanzhou Agrochemicals Industries Ltd v Panda Flowers Ltd* [2012] eKLR the court held:-

In my view, which view I gather from authorities and from the law. The court should consider such factors as the motive and character of the proceedings, the nature of the relief of remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under



all circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case.

17. It is evident from the record that the applicant is the registered owner of motor vehicle registration number KBR 466H which vehicle was involved in a road traffic accident on 17th December 2023 between himself and the respondent herein and one Daniel Muraguri who was a pillion passenger and rider respectively of motor cycle registration number KMGA 899Z along Kenyatta Road at Bristar area. The respondent herein filed her suit in Gatundu Law Courts being CMCC No. E042 of 2024 whereas Daniel Muraguri instituted his suit in Thika being CMCC No. E062 of 2024.

18. Section 15 of the *Civil Procedure Act* provides:-

Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

- a. The defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- b. Any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
- c. The cause of action, wholly or in part, arises.

19. The cause of action arose at Bristar area along Kenyatta road, in Gatundu South Sub-County. As such, Gatundu Chief Magistrate court has the requisite jurisdiction to deal with the matter in CMCC No. E042 of 2024. The court notes that the applicant himself has not sworn the supporting affidavit. It is the Assistant Legal Manager at First Assurance Company Limited, the insurer who is the party that swore the affidavit claiming that the applicant resides in Thika. The applicant further has not justified why the matter in Gatundu ought to be transferred to Thika Law Courts as he has not shown any possibility of undue hardship or expenses incurred in transporting witnesses or difficulties in conducting the trial. It is noted that the plaintiffs in the two different matters are different. It is also not disputed that the respondent herein is not a party to the Thika case.

20. It is my considered view that the court in Gatundu holds the requisite jurisdiction to hear and determine the matter CMCC No. E042 of 2024 and the said matter ought to remain in that court unless all the parties in the case agree and record a consent on transfer.

21. I find that the application dated 4th April 2025 lacks merit and is hereby dismissed with costs to the respondent.

22. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 31ST DAY OF JULY 2025.

F. MUCHEMI

JUDGE

