



**EJS v CKT (Family Miscellaneous Application E020 of 2025)
[2025] KEHC 11908 (KLR) (11 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11908 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
FAMILY MISCELLANEOUS APPLICATION E020 OF 2025
RN NYAKUNDI, J
AUGUST 11, 2025**

BETWEEN

EJS APPLICANT

AND

CKT RESPONDENT

RULING

1. What is pending before this court for determination is a Notice of Motion Application dated 9th June 2025 in which the Applicant is seeking the following orders: -
 - a. Spent.
 - b. That this honorable court be pleased to order the transfer of Eldoret Chief Magistrate Divorce Cause No. 1083 of 2024CKT vs EJS from the Chief Magistrate’s court at Eldoret to the Chief Magistrate’s Nairobi, Milimani for hearing and determination.
 - c. That the court be pleased to issue any other or further orders.
 - d. That costs be in cause
2. The Application is made on the following grounds on the face of it among others that: -
 - a. The divorce case herein, now scheduled for hearing on 11th June 2025, should be considered for transfer for hearing from Eldoret to Nairobi Magistrate court at the earliest opportunity.
 - b. The basis for this request is that Nairobi and not in Eldoret is fair, proper and just place to determine the case as: -
 - a. Every single claim [cruelty report to the police desertion, adultery, irresponsibility and lack of providing for the family, disrespect, deprivation of conjugal rights] occurred in Nairobi and not Eldoret.



- b. Both petitioner and the respondent (a) reside and (b) live in Nairobi since their marriage. They have lived in various locations within Nairobi and its environs, including (a) Kinoo (January 2020-February 2021), (b) Kitengela (March 2021-April 2022), and (c) [Particulars Withheld] (from May 2022). The parties settled in their matrimonial home in [Particulars Withheld], Twiga court, after jointly purchasing land and constructing a house. However, on 22nd August 2023, the petitioner, CT, deserted the matrimonial home and relocated to Kitengela.
- c. The two (2) children whose care and custody are issue in the cause live in and school in Nairobi. All the special and general medical care have been provided throughout in Nairobi.
- d. All the documents to be referred to and produce in the trial are situated in Nairobi. These include
 - (i) police reports,
 - (ii) title deed for matrimonial property,
 - (iii) children’s school records, financial upkeep and accommodation information,
 - (iv) medical reports for special and general care,
 - (v) employments records, and other essential documents are all based in Nairobi.
- c. It was a mistake to file the case in Eldoret and to consider it as having jurisdiction over the matter; The petition, dated 11th June 2024, was filed as Eldoret Chief Magistrate Divorce Cause No. 1083 of 2024CKT vs EJS, seeking divorce. In response, the Respondent entered an appearance, filed an answer to the petition, and lodged a cross-petition, denying all allegations made by the petitioner.
- d. The application has been made in good faith and at the earliest opportunity to prevent further distress and potential harm to the Applicant and the children.
- e. The transfer of the case will fulfill the judicial policy and spirit of *the constitution* to ensure reasonable access to justice to all citizenry within a reasonable physical location, at minimal cost, with the least inconvenience, with finality, and expeditiously.
- f. Failure to transfer the matter will subject the Applicant to continue psychological, emotional and financial distress, while no prejudice will be suffered by the Petitioner should the matter be heard in Nairobi, where both parties reside.
- g. The Applicant/Respondent stands to suffer undue hardship, both financially and logistically, if she is required to travel to Eldoret for the hearing of this matter, yet all relevant factors Nairobi as the appropriate jurisdiction.
- h. The Applicant contents that the Petitioner filed the case in Eldoret in bad faith because: -
 - a. He has more resources than the Applicant hence limiting the Applicant/Respondent in accessing the court
 - b. Having abandoned the family especially the children including the child who needs constant medical care, he has time to travel and spend time in Eldoret, a luxury of time that the Applicant/Respondent can barely afford



- i. Matters should be transferred where necessary to promote efficiency, convenience and access to justice.
 - j. No prejudice will be suffered by the Petitioner/ CT if the suit is transferred to Nairobi, whereas the Respondent will be greatly inconvenienced should the case remain in Eldoret.
3. The Application is supported by the annexed affidavit dated 9th June 2025 sworn by the Applicant who avers as follows;
 - a. I verify the contents of the application and the suit filed herein. I do swear this affidavit in support thereof
 - b. The divorced case herein, now scheduled for hearing on 11th June 2025, should be considered for transfer for hearing from Eldoret to Nairobi Magistrate court at the earliest opportunity
 - c. The basis for this request is that Nairobi and not in Eldoret is fair, proper and just place to determine the case as: -
 - a. Every single claim [cruelty report to the police desertion, adultery, irresponsibility and lack of providing for the family, disrespect, deprivation of conjugal rights] occurred in Nairobi and not Eldoret.
 - b. Both petitioner and the respondent (a) reside and (b) live in Nairobi since their marriage. They have lived in various locations within Nairobi and its environs, including (a) Kinoo (January 2020-February 2021), (b) Kitengela (March 2021-April 2022), and (c) [Particulars Withheld] (from May 2022). The parties settled in their matrimonial home in [Particulars Withheld], Twiga court, after jointly purchasing land and constructing a house. However, on 22nd August 2023, the petitioner, CT, deserted the matrimonial home and relocated to Kitengela.
 - c. The two (2) children whose care and custody are issue in the cause live in and school in Nairobi. All the special and general medical care have been provided throughout in Nairobi
 - d. All the documents to be referred to and produce in the trial are situated in Nairobi. These include
 - (i) police reports,
 - (ii) title deed for matrimonial property,
 - (iii) children's school records, financial upkeep and accommodation information,
 - (iv) medical reports for special and general care,
 - (v) employments records, and other essential documents are all based in Nairobi.
 - e. It was a mistake to file the case in Eldoret and to consider it as having jurisdiction over the matter; The petition, dated 11th June 2024, was filed as Eldoret Chief Magistrate Divorce cause no. 1083 of 2024CKT vs EJS, seeking divorce. In response, the Respondent entered an appearance, filed an answer to the petition, and lodged a cross-petition, denying all allegations made by the petitioner
 - f. The application has been made in good faith and at the earliest opportunity to prevent further distress and potential harm to the Applicant and the children



- g. The transfer of the case will fulfill the judicial policy and spirit of *the constitution* to ensure reasonable access to justice to all citizenry within a reasonable physical location, at minimal cost, with the least inconvenience, with finality, and expeditiously
- h. I stand to suffer undue hardship, both financially and logistically, if I am required to travel to Eldoret for the hearing of this matter, yet all relevant factors Nairobi as the appropriate jurisdiction
- i. I contend that the Petitioner filed the case in Eldoret in bad faith because: -
 - c. He has more resources than the I hence limiting me in accessing the court
 - d. Having abandoned the family especially the children including the child who needs constant medical care, he has time to travel and spend time in Eldoret, a luxury of time that I barely afford
- j. Matters should be transferred where necessary to promote efficiency, convenience and access to justice
- k. No prejudice will be suffered by the Petitioner/ CT if the suit is transferred to Nairobi, whereas the Respondent will be greatly inconvenienced should the case remain in Eldoret
- l. It is in the interest of justice, fairness and efficient administration of proceedings that this honorable court grants the orders sought
- m. I am advised by my advocates on record, advice I believe to be correct, that the high court has the power under section 18 of the *Civil Procedure Act* to transfer this matter for just and efficient determination.
- n. I believe it is in the interest of justice and fairness that this honorable court grants the orders sought to ensure efficiency and convenience in the determination of this matter.

Decision

- 4. This Court, in exercising its powers under Sections 18(1), 11, 12, and 15 of the *Civil Procedure Act*; Order 51 Rule 1 of the Civil Procedure Rules; Sections 1A, 3, 3A, and 63(e) of the *Civil Procedure Act*; Sections 3, 55, 73, 76, and 77 of the *Marriage Act*, 2014; Articles 6(3), 48, 50(1), and 159 of *the Constitution* of Kenya; and all other enabling provisions of the law, hereby proceeds accordingly.
- 5. As a consequence, this honorable court do order the transfer of Eldoret Chief Magistrate Divorce Cause No. 1083 of 2024CKT vs. EJS from the Chief Magistrate’s court at Eldoret to the Chief Magistrate’s Nairobi, Milimani for hearing and determination.
- 6. Following this declaration the Deputy Registrar of the High Court removes this case docket from the Chief Magistrate’s court registry and have it transferred to the Chief Magistrate’s court at Milimani for further directions. The status conference be held on 19th of September 2025. It is so ordered.

GIVEN UNDER MY HAND AND SEAL OF THE COURT AND PUBLISHED VIA EMAILS OF THE COUNSELS AT ELDORET THIS 11TH AUGUST 2025

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R. NYAKUNDI

JUDGE

