

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT MISCELLANEOUS CIVIL CASE NO. E019 OF

2023

STEPHEN MBURU GITERE.....

.....APPLICANT

-VERSUS-

SALENE CREDIT LIMITED1ST

RESPONDENT

JOREKA AGENCY AUCTIONEERS.....2ND

RESPONDENT

RULING

1. Before this court is the Notice of Motion dated **6th March 2023** by

which the Applicant **STEPHEN MBURU GITERE** seeks the following orders:-

“(a) SPENT

(b) SPENT

(c) THAT the Honourable Court be pleased to withdraw and

transfer the aforementioned case, Ruiru SPMCC No. E093 of 2023 STEPHEN MBURU GITERE -VS- SALENE CREDIT AND JOREKA AGENCY AUCTIONEERS to the Chief Magistrate's Court at Nyeri for hearing and disposal.

(d) THAT the costs of the application be provided for.”

2. The application was premised upon **Order 51 Rule 1 Section 18(1)** and **3(a)** of the **Civil Procedure Act** and was supported by the Affidavit of even date sworn by the Applicant.
3. The 1st Respondent **SALENE CREDIT LIMTIED** opposed the application through the Replying Affidavit dated **21st August 2024** sworn by **MERCY KIRIMI MIRIKO** a director of the 1st Respondent.
4. The matter was canvassed by way of written submissions. The Applicant did not file any new written submissions but instead opted to rely their written submissions dated **23rd**

May 2024 whilst the Respondents relied upon the written submissions dated **19th June 2025**.

ANALYSIS AND DETERMINATION

5. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
6. The main issue arising for determination is whether the suit filed in the **Ruiru SPM's Court** can be transferred to the **Chief Magistrates Court in Nyeri**.
7. The transfer of cases from one Magistrates' Court to another is a supervisory function of the High Court and is codified in **Article 165(6) and (7) of the Constitution of Kenya 2010** in the following terms:
 - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body, authority exercising a judicial or quasi-judicial function, but not over a superior court.**
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before**

any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

8. **Section 17** of the **Civil Procedure Act** (hereinafter ‘**the CPA**’) provides as follows:

“17. Power to transfer suits which may be instituted in more than one court:

Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court; and the High Court after considering the objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed.”

9. Therefore where a contest arises as to which Magistrates' court shall hear and determine a dispute, **Section 17** mandates the High Court to decide which Court should take over the conduct of the suit. The jurisdiction of the High Court to transfer suits from one court to another is provided for by **Section 18** of the **Civil Procedure Act, Cap 21**.
10. **Section 18** of the **CPA** provides for the withdrawal and transfer of cases in the magistrates court as follows:-
- “18. On the application of any of the parties and after notice of 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 proceedings 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 proceedings 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 [emphasis my own]**

11. Therefore **Section 17** of the **CPA** caters for transfer of cases in instances where the suit is capable of being instituted in two or more Magistracy Courts and **Section 18** of the **CPA** provides for the general power of the High Court to withdraw and transfer a case from one magistrates court to another

regardless of whether such suit may be instituted in more than one Court.

12. In the case of **DAVID KABUNGU -VS- ZIKARENGA** and **4 Others, Kampala HCCS No. 36 of 1995**, the Court in discussing the circumstances under which a suit may be transferred stated as follows:-

“Section 18(1) 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 courts without 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 or the suit has been filed in a particular court for purposes of working injustice.

What the court has to consider is whether the Applicant has made a case to justify it in closing doors of the court on which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction..... It is a well established principle that the onus is on 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 conveniences, questions of expenses, 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 duplication 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 from which transfer is

sought has no jurisdiction to try the case, transfer could be refused.....” [Own emphasis]

13. **Section 18** empowers the High Court to withdraw and transfer a case instituted as a subordinate court on the application of any of the party or indeed ‘**Suo Moto**’ provided that the High Court is satisfied that sufficient grounds exist to transfer the case.
14. In the case of Julius **LEKURUITO & Another -vs- NOTTINGHAM MWANGI & ANOTHER [2018] eKLR**, it was held that

“Under Section 17 and 18 of the Act [CPA], upon application by a party or on its own motion, the High Court may transfer the suit to another subordinate court with territorial jurisdiction, when justice of the case demands such action.”
15. Country wide jurisdiction for magistrates courts was abolished by the **Magistrates Courts Act No. 26 of 2015**. The Magistrates Courts are therefore guided only by the limits on territorial jurisdiction as set out in the **CPA**.

16. In the case of **PAULO ANYANZWA KUTEKHA -VS- STEEL STRUCTURES LIMITED [2019] eKLR** it was stated as follows:-

(7) It will be noted that now the position is different. The Magistrates Court's Act Cap 10 was repealed and replaced by the Magistrates' Courts Act No. 26 of 2015 that commenced operation on 2nd January 2016. This followed the promulgation of the new Constitution of Kenya 2010 which at Article 169(1) established subordinate courts (including Magistrate's Courts). Under Article 169(2) parliament was to enact legislation to confer jurisdiction, functions and powers upon the subordinate courts. It did so in the magistrates' courts Act, No. 26 of 2015 as far as those acts are concerned.

(8) The new Act appears to have removed the countrywide jurisdiction of magistrates' courts. At any rate, there is not a similar

provision in statute. The territorial jurisdictions set out in the Civil Procedure Act, therefore now appear to be substantive provisions regarding jurisdiction of magistrates courts. [Own emphasis]

17. Any party seeking the transfer of a suit must provide sufficient reasons as to why the transfer is merited. The High Court is vested with the discretion to either grant or decline the transfer. When it comes to territorial jurisdiction, **Section 15** of the **Civil Procedure Act** provides as follows:-

“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 is 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 is 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.”**

18. In this matter the motor vehicle in question was repossessed along the **Nyeri-Nyahururu Road**. The Applicant states that the Respondents reside in **Ruiru** and therefore submit that the court with requisite territorial jurisdiction to try the matter would be the **Ruiru Magistrates Court**. Further there is the issue of the trailer whose loss was reported at **Nyeri Police Station** and at DCI Headquarters along **Kiambu Road**.

19. It is manifest that what is in issue here is the question of **'territorial jurisdiction'** which relates to the **'location'** of the court in which the suit ought to be filed. **'Territorial jurisdiction'** is distinguishable from **'pecuniary jurisdiction'**. The former is more of an administrative function to ensure that courts are not clogged with suits which ought to have been filed in a court in a different geographical location. Pecuniary jurisdiction relates to the competency of a court to entertain a particular matter.
20. In **Waweru v Prime Auto Solutions Limited (Miscellaneous Civil Application E053 of 2023) [2024] KEHC 1971 (KLR) Hon. Justice Muchemi** in transferring a suit from the magistrates court in **Ruiru** which lacked territorial jurisdiction to **Milimani Chief Magistrate** court for disposal reasons as follows:

"The applicant states that the respondent's garage is along the Eastern bypass and thus the court within the nearest geographical jurisdiction is Ruiru Magistrate's court. The respondent on the hand, argues that it carries on its business in

Nairobi and the subject motor vehicle is held in Nairobi. In that case, the applicant ought to have filed the suit in Nairobi and not in Ruiru. I have looked at the provisions of Section 18 of the Civil Procedure Act which empowers this court to transfer suits to another Subordinate Court. I find no provision prohibiting such transfer.if in the event that the suit filed at Ruiru was to be dismissed for the reasons given by the respondent, it would be contrary to the provisions of Section 159 (2) (d) the constitution and the overriding objective which would result in hardships and unnecessary cost to the parties. The Constitution and the Overriding Objective defeated by denying the orders sought in this application considering that Section 18 of the Civil Procedure Act. The respondent carries on a business in Ruai in Nairobi County and the suit to have been filed in Nairobi - as provided for by Section 15 of the Act.”

21. This court is mindful of the overriding objective principle (the Oxygen principle) as captured by **Sections 1A and 1B** of the **CPA**. Courts are obligated to handle all matters before them in a timely expeditious efficient and just manner. Equally **Section 159 (2) (d)** of the **constitution** extorts court to administer substantive justice without undue regard to technicalities.
22. It would in my view visit unnecessary hardship and expense to the parties to insist that the suit be heard at the **Ruiru Magistrates Court**. I am mindful of the fact that the vehicle in question was repossessed along the **Nyeri-Nyahururu** road which is a road that links two counties. However the report of the missing trailer was made at the **Nyeri Police Station** and was probably being investigated by officers from **Nyeri**.
23. Based on the above I opine that under **Section 18(a)** of the **CPA** the proper court to handle the suit is the Magistrates court in **Nyeri**.
24. I therefore allow the Notice of Motion dated **25th May 2023** and direct that **Ruiru SPMCC No. 093 of 2023** be and is

hereby transferred to **Nyeri Chief Magistrates** court for hearing and disposal. Each party to meet their own costs for this application.

Dated in Nyeri this 1st day of August 2025

.....
MAUREEN A. ODERO
JUDGE