



**NEK v PO (Miscellaneous Application 3 of 2023)  
[2024] KEHC 2599 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2599 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS APPLICATION 3 OF 2023  
WM MUSYOKA, J  
MARCH 15, 2024**

**BETWEEN**

**NEK ..... APPLICANT**

**AND**

**PO ..... RESPONDENT**

**RULING**

1. The Motion, dated 19<sup>th</sup> October 2023, is by the applicant. It seeks transfer of a matter pending before the Busia Children’s Court, being Busia Children’s *Case No. E012 of 2022*, to Vihiga Principal Magistrate’s Court, to be heard by the judicial officer with jurisdiction to handle children’s matters there. The applicant avers to be a resident of Vihiga County, while the minors, the subject of that suit, are pupils at [Particulars Withheld] Academy. He avers that it would be more convenient to have the matter handled from Vihiga. He has attached a copy of the plaint in Busia Children’s *Case No. E012 of 2022*, and a letter from [Particulars Withheld] Academy.
2. The respondent has replied to the application, vide her affidavit, sworn on 17<sup>th</sup> November 2023. She avers to be a permanent resident of Busia County. She states that no inconvenience would be suffered by having the matter heard at Busia, for the only witnesses expected in the matter are herself and the applicant. She asserts that the children are not expected to testify, and that if any report is required of them, the Children’s Officer would be able to access them wherever they would be. She also argues that the matter could be handled virtually, and there would be no need for either party to travel. She avers that she has custody of a 4-year old, and travelling with that minor, in the event of the matter being transferred, would cause hardship.
3. The applicant has filed a rejoinder, through an affidavit that he swore on 23<sup>rd</sup> February 2024. He argues that the matter ought to have been filed at the locality where the defendant resides, that he is the defendant in the suit, and, therefore, the cause should have been initiated at Vihiga. He further argues that he has substantial custody of the minors, given that he lives with the 2 older children at Vihiga.



He also argues that the separation between the parties happened at Vihiga, where the respondent was also resident, before she relocated to her parents' home in Busia.

4. Directions were given on 23<sup>rd</sup> November 2023, for canvassing of the application, by written submissions. Both sides have filed their respective written submissions, which I have read, and taken note of.
5. The subject-matter of this cause is the children. The dispute is about their custody, care and maintenance. I note that each of the parents has custody of some of the of the children, the applicant has the older children, while the respondent has the youngest. That would mean that the subject-matter is scattered across the 2 Counties where the parents reside. The cause can be handled from either of the 2 locales. Convenience, however, tilts in favour of the applicant, who has custody of the youngest child, for it would cause hardship to the minor, to have the child ferried across the Counties, in the event an order is made for the production of that child in court, after transfer of the matter to the Vihiga law courts.
6. The order that commends itself to me is to decline the invitation to have the matter transferred from the Busia law courts to Vihiga law courts. Let the parties concentrate on the main issue, around custody care and maintenance of the children, instead of engaging in time-wasting interlocutory applications. It would be in the best interests of the children to have the cause disposed of at the earliest, from whichever locale.
7. Consequently, I hereby dismiss the Motion, dated 19<sup>th</sup> October 2023. There shall be no order on costs. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 15<sup>TH</sup> DAY OF MARCH 2024.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Mukabi, instructed by Mukabi & Company, Advocates for the applicant.

Ms. Nabulindo, instructed by DK Nabulindo & Company, Advocates for the respondent.

