

**IN THE HIGH COURT OF SINDH, AT KARACHI**  
**Civil Transfer Application No. 55 of 2021**

Applicant : Mst. Hira Imam d/o Imamuddin Shoukeen,  
through Mr. Khawaja Shams-ul-Islam, Mrs. Navin  
Merchant and Mr. Khalid Iqbal advocates.

Respondent No.1 : Civil & Family Judge, Karachi South

Respondent No. 2 : Hasan Khurshid Hashmi s/o Khurshid A. Hashmi,  
through M/s. Muhammad Haseeb Jamali and Syed  
Khurram Nizam, advocates.

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Date of hearing : 29.03.2022, 07.04.2022 & 14.04.2022

Date of order : 14.04.2022

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**ORDER**

**ZAFAR AHMED RAJPUT, J:-** Through instant Civil Transfer Application, applicant Mst. Hira Imam seeks transfer of Guardian & Wards Application No. 130 of 2020 (*“Application”*) pending adjudication before the Court of Civil & Family Judge, Karachi-South (*the “trial Court”*) to any other Court of Civil & Family Judge Karachi-South.

2. The Transfer Application contains a lengthy narrative of various facts and circumstances forming the background of the case, but it is not necessary to repeat them here. For present purposes, it would suffice to state that the applicant seeks transfer of the Application from trial Court on the grounds of harsh and bias attitude, leniency towards the respondent No.2, failing in deciding the question of jurisdiction in compliance of the direction of the Honourable Supreme Court in Civil Petition No. 3057 of 2021 and apprehension of not getting fair justice. The learned counsel for the applicant in support of their contentions have referred to various paragraphs of the memo of transfer application, which according to them are the actual and valid facts and the same fortify the case of the applicant for transfer of the Application.

3. On the other hand, learned counsel for the respondent No.2 while referring Counter Affidavit of the respondent No.2 has opposed transfer of the Application from the trial Court. Applying wrong section of law in transfer application; unreasonable suspicion of bias and non-existing of actual bias; harassing and maligning unnecessarily to presiding officer of the trail Court to make a claim for transfer; approaching this Court with unclean

hands, are the essential points of the arguments of the learned counsel for the respondent No.2, who in support of his contentions has relied on the case-law reported as 2021 SCMR 1509, PLD 2014 SC 585, 2010 SCMR 1358, PLD 1998 SC 388, 1979 SCMR 147, PLD 1976 SC 57, PLD 1971 SC 585, PLD 1969 SC 201, PLD 1963 (W.P.) Karachi 781 and PLD 1993 Lahore 554.

4. On the direction of this Court, learned presiding officer of the trial Court has filed her comments wherein she has denied the allegations leveled against her in the transfer application; however, she has no objection and rather prays for the transfer of the Application to any other Court.

5. Heard the learned counsel for the applicant as well as learned counsel for the respondent No.2 and have perused the material available on record with their assistance.

6. The applicant has maintained instant transfer application under section 24, C.P.C. The learned counsel for the respondent No.2 has rightly pointed out that the enabling provision for transfer of a case filed under Guardian and Wards Act, 1890, is section 25-A of the Family Court Act, 1964, as while dealing with Guardian and Wards case/application, the Family Court exercises its jurisdiction under section 5 of the said Act. However, it is well-settled law that mere mentioning of wrong provision of law is no ground for the rejection of the lis, which is otherwise maintainable.

7. As observed in the case of *Muhammad Nawaz v. Ghulam Kadir and 3 others* (PLD 1973 SC 327), the principles which ought to govern the disposal of transfer applications of the present kind have been spelt out by the superior Courts from time to time. Although these cases deal with a wide variety of circumstances and grounds urged for their transfer from one Court to another, yet certain well-defined principles of general application are clearly discernible. The transfer of a case from a Court of competent jurisdiction is justified only if there is a reasonable apprehension in the mind of the party concerned that the Court would not be able to act fairly and impartially in the matter. It is of paramount importance that parties before Courts should have confidence in their impartiality. It is one of the important duties of a High Court to create and maintain such confidence, and this can be done only by ensuring that, so far as practicable, a party will not be forced to

undergo a trial by a Judge whom he reasonably regards as being pre-decided against him. What is a reasonable apprehension must be surrounding circumstances; and the Court must endeavor, as far as possible, to place itself in the position of the applicant seeking transfer, and look at the matter from his point of view, having due regard to his/her state of mind and the degree of intelligence possessed by him. Nevertheless, it is not every incident regarded as unfavourable by the applicant which would justify the transfer of the case. The test of reasonableness of the apprehension must be satisfied, namely, that the apprehension must be such as a reasonable man might justifiably be expected to have.

8. It appears in the present case that, on 29.11.2021, the applicant filed an application before the trial Court under section 152 r/w section 151 C.P.C seeking, *inter alia*, correction/rectification of mistakes in the order dated 23.11.2021, waiving the penalty and to decide question of jurisdiction in view of the Order, dated 18.06.2021, passed by the Honourable Supreme Court in CPLA No. 3057 of 2021, which has not been decided by the trial Court and now the matter is fixed for cross-examination of the respondent No.2 as last and final chance. In these circumstances, it is manifestly clear that a reasonable apprehension must have arisen in the mind of the applicant/mother that she would not get justice from the trial Court, irrespective of the fact that the impartiality of the presiding officer cannot be doubted, who has herself prayed for the transfer of the Application to any other Court.

9. For the foregoing facts and circumstances, instant application is allowed. Consequently, Guardian & Wards Application No. 130 of 2020 is withdrawn from the board of the Court of Civil & Family Judge, Karachi-South with directions to learned District Judge, Karachi-South to assign it to any other Court of Civil/Family Judge of the District for its disposal in accordance law and directions passed by the Apex Court and this Court.

Transfer Application stands disposed of.

**JUDGE**

Athar Zai