THE REPUBLIC OF UGANDA
IN THE FAMILY AND CHILDREN COURT OF PALLISA AT PALLISA
FAMILY CAUSE NO. 004 OF 2026

IN THE MATTER OF THE CHILDREN ACT, CAP 62
AND
IN THE MATTER OF AN APPLICATION FOR CUSTODY AND MAINTENANCE ORDERS

SSEKU JAMES **APPLICANT**

VERSUS

WAMBETTE PHIONA **RESPONDENT**

BEFORE: H/W KYEMBE KARIM, MAGISTRATE

RULING ON OBJECTION TO JURISDICTION

Introduction

1. The Applicant brought this application by Notice of Motion under Article 34(1) of the Constitution, Sections 116 and 121 of the Children Act, Cap 62, Rule 19 of the Children (Family and Children Court) Rules, S.I. 59-2, and Order 52 Rules 1 and 2 of the Civil Procedure Rules. He seeks custody of the child, a maintenance order against the Respondent or, in the alternative, an order that both parties contribute equally to the child's maintenance, and costs.

2. The Applicant calls the child Sebastian Takule. The Respondent calls him Wambette Fabian Lucas, the name on his NIRA Birth Notification Record, which shows that he was born on 23rd July 2025. Nothing in this ruling turns on the name, and I refer to him simply as "the child".

3. The application is supported by the affidavit of the Applicant and a supplementary affidavit of **Kantono Irene**, both sworn on 20th May 2026. The Respondent opposed it by an affidavit in reply sworn on 23rd June 2026, and the Applicant filed an affidavit in rejoinder on 13th July 2026.

4. Before the application was heard, counsel for the Respondent wrote to Court on 7th August 2026 asking that the cause be dismissed for want of jurisdiction. Counsel for the Applicant replied on 24th August 2026, and counsel for the Respondent rejoined on 9th September 2026. Jurisdiction

must be decided first, because a court without jurisdiction cannot take one more step: ***Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1***.

Representation

5. The Applicant is represented by **M/s Nappa & Co. Advocates**. The Respondent is represented by **Women's Probono Initiative (Legal Aid Clinic)**.

Background

6. The parties met in 2024 at Kiruddu National Referral Hospital, where the Applicant was a medical intern and the Respondent a nurse. The child was born on 23rd July 2025 at Kawempe National Referral Hospital. The parties have never lived together, and the child has been with the Respondent since birth.

7. The Applicant's case is that on 28th March 2026 the Respondent brought the child to Kanginima Hospital in Butebo District and left him there with the Applicant's sister. The matter was reported at Kanginima Police Post vide SD REF: 04/29/03/2026, and on police advice the child was handed back to the Respondent on 31st March 2026. The Respondent denies abandoning the child and says she had gone to buy drugs. She later reported the Applicant to Kawempe Police for neglect to provide necessaries.

8. On 29th July 2026 the Respondent filed Family Cause No. 22 of 2026 in the Family and Children Court at Kasangati, seeking a declaration of parentage, custody and maintenance of the same child against the Applicant. That matter is pending.

Submissions

9. Counsel for the Respondent submitted that under Rule 5 of the Children (Family and Children Court) Rules the Court has jurisdiction only where the child resides or where the cause of action arises. The child lives with the Respondent at Lubatu-Kabaganda LC1, Kiteezi Ward, Kasangati Town Council, Wakiso District, and has never lived in Pallisa. Counsel argued that no material fact connects the case to Pallisa; that Section 16 of the Civil Procedure Act cannot confer jurisdiction; that jurisdiction can be raised at any stage (***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696***; ***Uganda Railways Corporation v Ekwaru D.O & 5104 Others***

[2023] UGSC 59); and that the Applicant had filed in Pallisa to inconvenience the Respondent. Counsel prayed that the cause be dismissed with costs or, in the alternative, transferred to Kasangati.

10. Counsel for the Applicant contended that an objection to jurisdiction ought to be raised in the manner prescribed under Order 9 Rule 3(1)(g) of the Civil Procedure Rules (***Mark Graves v Bolton Uganda Ltd HCMA No. 15 of 2008***), and that an objection to the place of suing is caught by Section 16 of the Civil Procedure Act. Counsel relied on Ssekaana & Ssekaana, ***Civil Procedure and Practice in Uganda*** (2nd Ed.), and ***Halsbury's Laws of England, Vol. 11 (2020), para. 119*** on the meaning of cause of action. He also argued that the Respondent's later filing at Kasangati is an abuse of court process.

Issues

(i) Whether the objection is properly before Court.

(ii) Whether this Court has jurisdiction to entertain the application.

(iii) What remedies are available.

Issue 1: Whether the objection is properly before Court

11. Jurisdiction is conferred by law. It cannot be conferred by consent, acquiescence or waiver: ***Desai v Warsama [1967] EA 351***. A court must satisfy itself that it has jurisdiction whether or not a party raises the point.

12. A letter is not the best way to raise a preliminary objection. However, the point is one of pure law that is apparent on the face of the record (***Mukisa Biscuit*** (supra)), and the Applicant has fully answered it in writing. He has suffered no prejudice. Under Article 126(2)(e) of the Constitution, the Court will not decline to decide a question going to its competence because of the form in which it was raised.

13. Order 9 Rule 3(1)(g) sets out how a defendant who has been served with summons in an ordinary suit may dispute jurisdiction. It does not relieve the Court of its own duty to confirm that it has jurisdiction. Section 16 of the Civil Procedure Act bars an appellate or revisional court from entertaining an objection to the place of suing unless the objection was taken at first instance. Here the objection is taken in this Court of first instance, before the

application has been heard. Section 16 therefore does not prevent the Court from considering it.

14. The objection is properly before Court.

Issue 2: Whether this Court has jurisdiction

15. Rule 5 of the Children (Family and Children Court) Rules, as quoted by counsel without dispute, provides:

> *"Subject to the Act and any other written law, the Court shall have jurisdiction in the trial and determination of all causes and matters of a civil nature concerning children where the child resides or where the cause of action arises."*

16. The Rule sets out two alternative connecting factors: the residence of the child, or the place where the cause of action arises. The residence of the Applicant is not one of them.

17. **Residence of the child.** In paragraph 7 of his affidavit in support, the Applicant states that the child remained with the Respondent after birth because the parties do not live together. In paragraph 22 he states that the child was handed back to the Respondent on 31st March 2026. He nowhere alleges that the child has ever lived within the local limits of this Court. The Respondent's evidence that the child lives with her in Kasangati Town Council, Wakiso District, is not challenged in the Applicant's rejoinder. I find that the child resides in Wakiso District, outside the jurisdiction of this Court.

18. **Place where the cause of action arises.** The only event pleaded within this area is the alleged desertion of 28th March 2026 at Kanginima Hospital, which was reported at Kanginima Police Post. Kanginima is in Butebo District. A Chief Magistrate's Court has been gazetted for Butebo under the ***Magistrates Courts (Magisterial Areas and Magistrates Courts) Instrument, 2024 (S.I. No. 11 of 2024)***, but it is not yet operational, and matters arising from Butebo District are still filed in this Court. I therefore treat events at Kanginima as falling within the local limits of this Court. The question is whether that single event is the cause of action.

19. A cause of action consists of the facts that the Applicant must prove to obtain the orders he seeks: ***Halsbury's Laws of England, Vol. 11 (2020), para. 119***. The Applicant seeks custody of the child and an order that the

Respondent maintain him or contribute to his maintenance. Those claims concern the child's day-to-day care, upbringing and needs. They are continuing matters, and they arise where the child lives and is cared for. The events at Kanginima are evidence on which the Applicant relies to question the Respondent's suitability. They are not the cause of action itself. The claims for custody and maintenance would exist in the same form even if the parties had never gone to Kanginima.

20. The episode also ended on 31st March 2026, when the child was returned to the Respondent. When this application was filed on 22nd May 2026, the child had been back in Wakiso District for nearly two months. Nothing pleaded connects his care, needs or upbringing at that time to this area.

21. A wider reading would defeat the purpose of Rule 5. If any single incident involving the child were enough, a parent could choose a court anywhere the child had briefly been. The Kawempe police summons, for instance, would equally place the matter in Kampala. Rule 5 must be read with Section 3 of the Children Act, which makes the welfare of the child the paramount consideration. Custody and maintenance orders call for social inquiry reports, supervision and enforcement, and these are properly handled by the court where the child lives.

22. On the argument of abuse of process, this cause (filed on 22nd May 2026) came before the Kasangati cause (filed on 29th July 2026). Ordinarily, Section 6 of the Civil Procedure Act would give the earlier suit priority. That section, however, presupposes that the earlier suit is before a court competent to grant the relief sought. A suit filed in a court without jurisdiction cannot be used to stop proceedings in a competent court. Whether the Kasangati cause is otherwise an abuse of process is for that court to decide.

23. I find that this Court has no territorial jurisdiction to entertain the application.

Issue 3: Remedies

24. The Respondent prays, in the alternative, that the cause be transferred to Kasangati. The power to transfer a matter from a court in one magisterial area to a court in another lies with the High Court under Section 18 of the Civil Procedure Act. Having found that it lacks jurisdiction, this Court cannot transfer the matter, and that prayer is declined.

25. Because the merits have not been considered, the proper order is to strike the cause out rather than dismiss it. The Applicant's concerns about the child's welfare, including the events of 28th March 2026, may be placed before a competent court. In particular, custody is already directly in issue in Family Cause No. 22 of 2026 at Kasangati.

26. This is a dispute between the parents of a child of tender years. An order for costs would only reduce the resources available for his upkeep. Each party shall bear their own costs.

Orders

1. The objection to jurisdiction is upheld.
2. Family Cause No. 004 of 2026 is struck out for want of territorial jurisdiction, without prejudice to the Applicant's right to pursue custody, access or maintenance of the child before a competent court.
3. The prayer for transfer of the cause to the Family and Children Court at Kasangati is declined.
4. Each party shall bear their own costs.

Right of appeal explained.

Delivered at Pallisa this ……08th… day of …OCT… 2026.



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HIS WORSHIP KYEMBE KARIM
MAGISTRATE