



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

CIVIL APPEAL NO. E015 OF OF 2021

BETWEEN

JOYCE NYAWIRA MUTEGLI..... APPELLANT

AND

DENNIS MUTWIRI KABURU.....RESPONDENT

(Being an appeal from ruling in Githongo PMCC NO. 3 OF 2020 by Hon. E.W.Ndegwa (RM) on 11<sup>th</sup> January, 2021)

JUDGMENT

**Background**

1. The accident that is the subject matter of this suit occurred along **Njiru-Mwiki road** as a result of which the accident motor vehicle plunged into Nairobi River.
2. The Appellant pleaded that the course of action arose along Kasarani-Mwiki Road but the Defendant is a resident of Katheri.
3. Defendant/Respondent raised an objection to the place of filing the suit on the ground that it occurred outside the jurisdiction of Githongo Court and that he is a resident of Nairobi.
4. It is trite law that "whoever alleges must prove. **Section 107 of the Evidence Act, Chapter 80 Laws of Kenya** states as follows:
  - 1) **Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, must prove that those facts exist.**
  - 2) **When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person**
5. For Appellant's suit to fall within the ambit of the provisions of Section 14 of the Civil Procedure Code, she had a duty to prove that Respondent is a resident of Katheri and not Nairobi which she failed to do.
6. Consequently, I find that the finding by the trial magistrate was legitimate. However, it should be the court's last resort to deny a party a chance to be heard. The overriding objective of the civil procedure rules is to facilitate the just, expeditious, proportionate and affordable resolution of disputes. Judicial authority to do justice to all, vested on this court by Article 159 of the Constitution cannot be said and be seen to be exercised if the courts were to deny a party a chance to be heard on merit only for the reason that the suit ought to have been filed in another court.
7. In conclusion, the appeal is allowed in the following terms:
  - 1) **The order dated 11<sup>th</sup> January, 2021 striking out the Appellant's suit is set aside**
  - 2) **Appellant's suit is reinstated for hearing on merit**
  - 3) **Githongo PMCC NO. 3 OF 2020 is transferred to Chief Magistrate's Milimani Commercial Courts Nairobi for hearing and disposal**

DELIVERED IN MERU THIS 24<sup>th</sup> DAY OF FEBRUARY 2022

WAMAE. T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For the Appellant - Mr. Gichunge for Gichunge Muthuri & Co Advocates

For the Respondent - Ms. Oteko for Kiruki & Kayika Advocates