



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

MISC. CIVIL CASE NO. E063 OF 2021

BETWEEN

JIMAS CORPORATION LIMITED.....APPLICANT

VS

PURITY NJERI KINYANJUL.....RESPONDENT

RULING

1. It is common ground of both parties that on 5th August, 2020 the parties hereof entered into hire purchase agreement whereby **JIMAS CORPORATION LTD** sold a vehicle to **PURITY NJERI KINYANJUI**. Purity filed a case before Senior Principal Magistrate's court at Ruiru Civil Suit NO. E054 of 2021. Jimas has filed a notice of motion application dated 26th February, 2021 before this Court. By that application, Jimas prays for the transfer of the suit filed before the Ruiru Magistrate's court to Mombasa Chief Magistrate's court. The application is brought under **Section 18(1)(a)** and **(b)** and Section 1A, 1B and 3A of the Civil Procedure Act, Cap. 21.

2. Purity conceded as submitted by Jimas that Jimas is a corporation registered in Mombasa and that the sale agreement between them was executed in Mombasa.

3. That concession brings this matter within the ambits of **Section 15** of Cap. 21. That Section requires Civil Suits to be filed within the local limits of whose jurisdiction the defendant resides or where the cause of action arose. That **Section 15 Cap 21** is in the following:-

“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 are 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 are 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.

4. Although Purity by her replying affidavit stated that she and her witnesses reside in Kiambu County and would be inconvenienced by the transfer of this Suit to Mombasa, the above Section plainly shows that Purity's, or for that matter, a plaintiff's convenience is not the consideration when a civil suit is filed.

5. This Court has power under **Section 18 of Cap. 21** to transfer as sought by Jimas the case before Ruiru magistrate's court to Mombasa Magistrates court. The provision of that Section are:-

“Power of High Court to withdraw and transfer case instituted in subordinate court:-

(1) On the application of any of the parties and after notice to 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 proceeding 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.

6. The Court in the case **GKK V. ANK (2021) eKLR** had opportunity to consider the provisions of **Section 18 of Cap 21** as follows:-

“It was held in the Ugandan case of DAVID KABUNGU VS ZIKARENGA HCCC NO. 36 OF 1995 that

Section 18 (1) (b) 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 court 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. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the plaintiff and leaving him to seek his remedy in another jurisdiction... It is well established principle of law that the onus is upon 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.”

7. Jimas has proved that the territorial jurisdiction of the case before the Ruiru Magistrate’s Court competently belongs to Mombasa court.

DISPOSITION

8. In respect to the Notice of Motion dated 26th February, 2021 this Court grants the following orders:-

(a) **Ruiru SRMCC No. E054 of 2021 PURITY NJERI KINYANJUI VS. JIMAS CORPORATION LIMITED** be and is hereby transferred to Chief Magistrate’s court Mombasa for disposal.

(b) The costs of the application are awarded to the applicant.

(c) This file shall hereafter be closed.

RULING DATED AND DELIVERED AT KIAMBU THIS 17TH DAY OF FEBRUARY, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For Applicant : - Jimas Corporation Ltd : - Ms. Azei HB Mr. Athuoch

For Respondent : Purity Njeri Kinyanjui : - Present in person

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE