



REPUBLIC OF KENYA



KENYA LAW
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**Mukiira v Mwirabua (Civil Case 30 of 2019)
[2022] KEHC 16713 (KLR) (22 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16713 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE 30 OF 2019
EM MURIITHI, J
DECEMBER 22, 2022**

BETWEEN

KAUME MUKIIRA PLAINTIFF

AND

**HON. JOSEPHAT GICHUNGE MWIRABUA A.K.A
AKABEABEA DEFENDANT**

RULING

1. Before this court is a Notice of Motion under certificate of urgency dated May 12, 2020 by the applicant, Hon Josephat Gichunge Mwirabua, brought under section 3A of the *Civil Procedure Act* and order L of the *Civil Procedure Rules*, seeking transfer of this case from this court to Tigania Chief Magistrate’s Court for hearing and final determination.
2. The application is grounded on the fact that the defendant/applicant resides in Tigania East and the alleged cause of action arose at Ntulili Primary School which is in Tigania, thus the suit ought to have been instituted in Tigania Magistrate’s Court, which has competent jurisdiction to deal with it.
3. In response to the application, the respondent swore a replying affidavit on July 21, 2021 averring that the damage caused to his reputation could not be compensated by damages given the slanderous utterances by the applicant. He avers that the High Court has unlimited original jurisdiction in both civil and criminal matters and even though section 11 of the *Civil Procedure Act* requires that a suit be filed in the court of the lowest grade competent to try it, that provision cannot be used to challenge the High Court’s jurisdiction to entertain and determine suits filed before it. He avers that the instant application ought to be dismissed as it is bad in law and unfounded. He avers that absolutely no prejudice will befall the applicant if the application is heard and determined by this court, since they are both residents of Meru.



4. In his submissions filed on January 26, 2022, the applicant urges that this court has the requisite jurisdiction to transfer the suit to Tigania Law Courts, and relies on the provisions of sections 11 and 18 of the *Civil Procedure Act*, Hangzhou Agrochemicals Industries Ltd b Panda Flowers Ltd (2012) eKLR and *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others* (2012) eKLR. He urges that although the High Court has unlimited original jurisdiction in both civil and criminal matters, it cannot oust the jurisdiction donated by statute to the magistrates court to hear and determine civil suits including actions founded on defamation, and relies on *J.P. Machira t/a Machira & Co Advocates v Wangechi Mwangi & Anor* (2018) eKLR. He prays for the suit to be transferred to Tigania Law Courts for hearing and determination, because it is where the cause of action arose and the parties reside there.
5. The respondent insists that this court has unlimited original jurisdiction to hear and determine this matter, and cites the Supreme Court case of *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & Others* (2012) eKLR. Although he admits that the defamatory remarks were made in Tigania, he urges that he resides and works within the jurisdiction of this court. He faults the applicant of failing to show what injustice or undue hardships the parties and/or witnesses will suffer if the suit is not transferred to Tigania Law Courts, and cites *Rapid Kate Services Limited v Freight Forwarders Kenya Limited & 2 Others* (2005) 1 KLR 292 and *David Kabungu v Zikarenga & 4 Others* Kampala HCCS no 36 of 1995. He accuses the applicant of being on a mission to circumnavigate the corridors of justice and mischievously delay the trial of this suit, and prays for the dismissal of the application with costs.

Analysis and determination

6. The High Court is empowered under section 18 (1) (a) of the *Civil Procedure Act* to transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try and dispose of the same. Section 15 of the *Civil Procedure Act* provides suits, other than for recovery of movable or immovable property, ought to be instituted where the defendant resides or cause of action arises, as follows:

“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.”

7. The applicant contends that the meeting where the respondent was allegedly defamed took place in Tigania within the jurisdiction of Tigania Law Courts, and it would only be fair that the matter is transferred to that court for hearing and determination. The respondent acknowledges that indeed the defamatory remarks were made in Tigania, but he is only objected to the intended transfer because he resides and works here in Meru.



8. The court in *Hangzhou Agrochemicals Industries Ltd v Panda flowers Ltd* [2012] eKLR (G V Odunga J as he then was) suggested some factors to be considered on an application for transfer as follows:-

“...the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and marinating witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case.”

9. There is no doubt that the magistrate’s court has jurisdiction to hear and determine actions founded on defamation and libel, as in this case. The civil jurisdiction of the magistrates court as provided under section 7 of the *Magistrate’s Court Act* goes up to ksh 20 million and for the principal magistrate’s court at ksh 10 million.

10. Section 11 of the *Civil Procedure Act* provides that:

“Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts: Provided that— (i) if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court; and (ii) nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same district.”

11. In this court’s view, justice in this case demands that this matter be transferred to Tigania Law Courts, where the cause of action arose, and where majority, if not all the witnesses reside. The plaintiff cannot be allowed to file the suit at the station of his convenience, where he resides and works. The consideration under section 15 of the *Civil Procedure Act* is the place where the defendant(s), and not the plaintiff(s), reside or work.

Orders

12. Accordingly, for the reasons set out above, the applicant’s application dated May 12, 2020 is merited, and the court orders that

1. This suit being High Court Civil Case no 30 of 2019 is transferred to the principal magistrate’s court at Tigania Law Courts for hearing and determination by a court of competent jurisdiction.
2. Costs in the cause.

13 Order accordingly.

DATED AND DELIVERED ON THIS 22ND DAY OF DECEMBER, 2022.



EDWARD M MURIITHI

JUDGE

Appearances:

Ms Aketch, advocate for the plaintiff.

Mr Ashaba, advocate for the defendant.

