



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARSEN

MISC. CIVIL APPL. NO. E001 OF 2021

ISSACK HAJIR ABDI.....APPLICANT

VERSUS

ALI FARAH MOHAMED.....1ST RESPONDENT

ABDI.REHMAN ALI MOHAMED.....2ND RESPONDENT

NOOR MOHAMED DAKANE..... 3RD RESPONDENT

EQUITY BANK- HOLA BRANCH..... 4TH RESPONDENT

Coram

Hon. Justice R. Nyakundi Applicant in person

Gekanana Advocate for the respondents

RULING

This is an application by the applicant seeking an order to transfer **Hola Principal Magistrate's Civil Case No. 2 of 2020** from that registry to **Garsen Senior Principal Magistrate's Court** for hearing and determination.

According to the applicant, the action was initially initiated at the Principal Magistrate Court at Hola but on account of the events that have taken place since instituting the suit as premised in the supporting affidavit, there is necessity to transfer the suit to another Court of equal status and jurisdiction.

The respondents though served, failed to enter appearance or file any rejoinder to the application. Therefore, non-challenge to the application makes it easier for the Court to determine whether the applicant desire to move the suit from Hola Court to Garsen for adjudication has merit.

Determination

Section 18 of the Civil Procedure Act empowers the Court to transfer suits from one subordinate Court to another. The conditions to meet by the applicant as stipulated in the provisions include interalia:

Balance of consequence, questions of expense, undue hardship interest of justice, want of jurisdiction and for any sufficient reasons. (See case of David Kabungu v Zikarenga & 4 others, Kampala HCC No. 36 of 1995, Hangshore Agro-chemicals Industries Ltd v Panda Flowers Ltd {2012} eKLR)

In **George Mwongera Mwenda Meru v Loise Gakii Misc. Application No. 70 of 2015** the Court held that:

"A superior Court, has the power to transfer causes from one subordinate Court to another for hearing and disposal. The Court went on to hold that the power served an important purpose in Law to attain the ends of and facilitate access to justice. That was why the Court could invoke and exercise the power suo moto."

The requirement that before the Court will issue an order for transfer must meet the outlined criteria is a useful one but it cannot be applicable generally it depends largely on the facts and circumstances of a particular case. To that extent looking at Section 11 and 18 of the Civil Procedure Act, it is clear that the applicant has brought himself within the provisions of those

Sections for the Court to act and move to transfer **Suit No. 2 of 2020** initially filed at **Hola Principal Magistrates Court at Hola to Garsen Senior Principal Magistrates Court** for trial and final determination.

In the end, the notice of motion dated 4.2.2021 be and is hereby allowed and the costs to be borne by the applicant.

DATED SIGNED AND DELIVERED AT MALINDI THIS 26TH DAY OF FEBRUARY, 2021.

.....

R. NYAKUNDI

JUDGE

NB: This Ruling has been emailed to the advocates

pursuant to the cause list of 26.2.2021

Issackhajir80@gmail.com Aomwancha2013@gmail.com