



REPUBLIC OF KENYA

IN THE HIGH COURT AT MERU

(CORAM: CHERERE-J)

MISC. CIVIL APPLICATION NO. E011 OF 2020

BETWEEN

PKE.....APPLICANT

AND

HN.....RESPONDENT

RULING

1. By a notice of motion dated filed 05th October, 2020 and filed on 07th October, 2020, brought under the provisions of Section 18 (1) (a) of the Civil Procedure Act, the Applicant prays **THAT:**

1) MAUA CHIEF MAGISTRATE'S CHILDREN CASE NO. 35 OF 2019 (the suit) be transferred to Chief Magistrate's Court in Thika for hearing and determination

2) Costs be in the cause

2. The application is based on grounds among others that the Applicant and the children the subject of the suit reside in Thika.

3. The application is supported by an affidavit sworn by the Applicant on 05th October, 2020 and filed on 07th October, 2020 in which he reiterates the grounds on the face of the application.

4. The application is opposed by way of a replying affidavit sworn by the Respondent on 04th November, 2020 and filed on 09th November, 2020. Whereas the Respondent does not deny that the Applicant resides in Thika, she asserts that the place of residence of the children is irrelevant to the place of hearing of the suit.

Analysis and determination

5. Section 15 of the Civil Procedure Act provides **THAT:**

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.

6. It is apparent that the Applicant resides and works for gain in Thika. The suit therefore ought to have been instituted in Thika Magistrate's Court which is the court within the local limits of whose jurisdiction Applicant personally works for gain.

7. Whereas it is alleged that the Magistrate's Court at Maua has already issued orders favourable to the Respondent and which have not been

complied with, the mischief sought to be cured by the foregoing provision was to prevent a situation where parties would go forum shopping thereby abusing the process of the court. In any case, such orders can still be enforced by the court sitting in Thika.

8. Section 18 of the Civil Procedure Act provides **THAT**:

(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

(2) 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.

DISPOSITION

9. From what is stated hereinabove, I find that Applicant has made out a case for transfer. It is therefore hereby ordered:

1) The Notice of Motion dated 05th October, 2020 and filed on 07th October, 2020 is allowed

2) MAUA CHIEF MAGISTRATE'S CHILDREN CASE NO. 35 OF 2019 be and is hereby transferred to **Thika Chief Magistrate's Court for hearing and disposal.**

DATED IN MERU THIS 11TH DAY OF FEBRUARY 2021.

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicant - Ms. Mutegi for Njiru Kithaka & Co. Advocates For Respondent - Mr. Mutembei for Mutembei & Kimathi Advs