



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

MISC. CIVIL APPLICATION NO. E036 OF 2021

IN THE MATTER OF ARTICLE 165 (6) AND (7) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF SECTIONS 11, 15 AND 18 OF THE CIVIL PROCEDURE ACT, CAP 21 OF LAWS OF KENYA

EKM.....APPLICANT

VERSUS

PKM.....RESPONDENT

RULING

In the Notice of Motion dated 12th August 2021 brought under Certificate of Urgency, EKM, the Applicant, is seeking to have Kajiado Chief Magistrate's Divorce Cause No. E020 of 2020 transferred from Kajiado Chief Magistrate's Court to Mavoko Principal Magistrate's Court for hearing and final determination. She also seeks costs. She has brought this application under Sections 1A, 1B, 2, 3 and 3A of Civil Procedure Act, Article 165(6) and (7) of the Constitution of Kenya, Sections 11, 15 and 18 of the Civil Procedure Act Cap 21 of the Laws of Kenya and all Other Enabling Provisions of Law.

The grounds in support of the application are found on the face of it and in the Supporting Affidavit sworn by the Applicant on 12th August 2021. I have read the grounds and I understand her case. She is the Defendant/Respondent in the Divorce Cause in the lower court. She states that she currently lives and works in Kitengela Township and was still living there after the separation with the Petitioner on 1st March 2020. That her lawyer practices law in Nairobi where his Firm is located while Respondent's lawyer practices law in Kitengela and therefore Mavoko Principal Magistrate's Court is the convenient court for both counsel. She states that the pre-trial conference has not been conducted and that this is the best time to have this matter transferred to Mavoko to enable the pre-trial conference to be conducted and to fix the matter for hearing. She states that Mavoko Court is not as busy as Kajiado Chief Magistrate's Court and therefore it will be possible to have the matter heard and concluded expeditiously and that it is because of the balance of convenience and speedy trial she seeks these orders.

The Respondent has filed a Replying Affidavit dated 1st September 2021 in which he has opposed this application. In summary he deposes that the Divorce Cause is properly before the Chief Magistrate's Court in Kajiado as that is the court with jurisdiction to try it; that his counsel is willing and ready to attend the hearing in Kajiado without causing delay. He asks the court to dismiss this application with costs to him.

On 16th November 2021 Mr. Gaturu, Learned Counsel and Mr. Waiganjo, Learned Counsel made oral submissions during virtual hearing. I have read and understood their submissions. Mr. Gaturu dwelt in detail on the provisions of the law granting this court powers to make orders as appropriate in respect of its supervisory mandate over the subordinate courts.

I have considered the applicable provisions of the law. Article 165(6) and (7) of the Constitution provides that:

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

The power of this court to transfer a case from on subordinate court to another is also found in Section 18 of the Civil Procedure Act. It provides as follows:

18. 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.

This issue, that this court has power to order for a transfer of a case from one subordinate court to another, is settled. The law is clear on that issue. In so acting, this court is guided by the Overriding Objective as proved under Section 1A and this court is alive that the transfer a matter from one court to another with jurisdiction to try it must be aimed at facilitating the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Civil Procedure Act. Further, under Section 1B of the Civil Procedure Act in furtherance of the overriding objective above, this court shall handle all matters presented before it for the purpose of attaining the following aims:

(a) the just determination of the proceedings;

(b) the efficient disposal of the business of the Court;

(c) the efficient use of the available judicial and administrative resources;

(d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and

(e) the use of suitable technology

I have considered this matter. Under Section 15 of the Civil Procedure Act, a suit like the one under consideration shall be instituted in a court within the local limits of whose jurisdiction the defendant or each of the defendants at the time of the commencement of the suit actually and voluntarily resides or carries on business or personally works for gain. The Applicant has satisfied this court that she works and lives in Kitengela which is situated near Mavoko Principal Magistrate's Court.

Mr. Gaturu in his submissions made it seem that Kajiado is very far from Kitengela. He actually stated that it is over 100km away. This is not true. However, I see no prejudice to any of the parties in having this matter moved to Mavoko. It will save them a few litres of fuel and time spend travelling the extra distance to Kajiado.

I am satisfied that by granting the orders sought in this application, this court will be furthering the Overriding Objective of the Civil Procedure Act under Section 1A of that Act. As I have stated, no prejudice will be suffered by any party, in my view, and the move will only shorten their travel time. I have also considered that the by transferring this matter, this court will be acting in consonance with the provisions of section 15 of the Civil Procedure Act.

For the above reasons, I hereby allow this application and grant Prayer 1 of the Notice of Motion dated 12th August 2021. On the issue of costs, I order each party to bear own costs. Orders shall issue accordingly.

DELIVERED, DATED AND SIGNED THIS 29TH NOVEMBER 2021.

S. N. MUTUKU

JUDGE