



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

MISC. CIVIL APPLICATION NO.23 OF 2020

HILLARY KIPLANGAT NG'ENO.....APPLICANT

VERSUS

BEATRICE CHELANGAT.....RESPONDENT

RULING

1. The Application coming for consideration in this ruling is dated 29/7/2020 seeking the following orders;

i) THAT there be a stay of proceedings and/or further proceedings in SOTIK PMCC No.9 of 2020 pending the hearing and determination of this Application (SPENT).

ii) THAT SOTIK PMCC No.9 of 2020 be transferred to KAPSABET PRINCIPAL MAGISTRATES court for hearing and determination.

iii) THAT the costs of the Application be in the cause.

2. The Application is based on the grounds on the face of it and supported by the Affidavit of HILLARY KIPLANGAT NGENO, the Applicant herein.

3. The Respondent filed a Replying Affidavit dated 26/9/2020 opposing the Application dated 29/7/2020.

4. I find that the subject of the suit filed at Sotik PMCC No.9 of 2020 are two minors whose paternity is not contested.

5. The place of filing suits is governed by the provisions of section 15 of the Civil Procedure Act which states as follows;

“Other suits to be instituted where defendant resides or cause of action arises

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.

Explanation.(1)—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence....”

6. In the current case, the two minors reside at Nandi South within the jurisdiction of Kapsabet Principal Magistrates' Court.

7. The Plaintiff/Respondent said in her Replying Affidavit that she filed the case at Sotik PM Court because of the covid 19 pandemic and further that the witnesses who have been involved on the issue of the children are at Kaplong.

8. Section 15 states that a suit should be filed where the Defendant resides or where the cause of action arose.

9. The Defendant/Applicant has stated in his Affidavit in support of the Application that he resides and works for gain at Nandi County which is within the jurisdiction of Kapsabet Court.

10. The said issue is not disputed by the Plaintiff/Respondent and I find that the Application dated 29/7/2020 is meritorious and I accordingly allow it and direct that Sotik PMCC No. 9 of 2020 be transferred to Kapsabet Law Courts for hearing and determination.

11. The costs of the Application to be in the cause.

Delivered, dated and signed at Kericho this 23rd October 2020.

A. N. ONGERI

JUDGE