



REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

(CORAM: CHERERE-J)

MISC. CRIMINAL APPLICATION NO. 159 OF 2019

BETWEEN

HOWARD MUHANDA.....APPLICANT

AND

CHARLES IMBIAKHA.....RESPONDENT

RULING

1. By a notice of motion dated 29th July, 2019 and filed on 06th August, 2019 brought under the provisions of Section 1A, 3A, 15 (a) & 18 (1) (b) (ii) of the Civil Procedure Act, the applicant prays **THAT:**

1) Kisumu CMCC 332 OF 2019 (*the suit*) be transferred to Chief Magistrate's Court Kakamega for disposal on merit

2) Costs be provided for

2. The application is based on grounds among others that the Applicant resides and works for gain in Kakamega whereas the Respondent resides in Nairobi and that there was no reasonable cause to file the suit in Kisumu.

3. The application is supported by an affidavit sworn by the Applicant on 29th July, 2019 in which he reiterates the grounds on the face of the application. Annexed to the affidavit is the plaint and the Respondent's statement filed in the suit marked **HM 1** and **HM2** respectively.

4. The application is opposed by way of grounds of opposition dated 13th August, 2019 and filed on 14th August, 2019 in which the Respondent mainly asserts that the application is brought under the wrong provisions of the law.

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. The plaint in the suit discloses that the Respondent resides and works for gain in Matende Secondary School in Kakamega County. The suit therefore ought to have been instituted in Kakamega which is the court within the local limits of whose jurisdiction Applicant personally works for gain.

7. Whereas it is pleaded that the wrong complained of in the suit was done through electronic media, 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.

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

DISPOSITION

9. From what is stated hereinabove, I find that applicant has made out a case for transfer. The Notice of Motion dated 29th July, 2019 and filed on 06th August, 2019 is allowed and it is hereby ordered that **Kisumu CMCC 332 OF 2019 CHARLES IMBIAKHA versus HOWARD MUHANDA** be and is hereby transferred to **Kakamega Chief Magistrate's Court** for hearing and disposal.

DATED AND DELIVERED AT KISUMU THIS 21ST DAY OF NOVEMBER 2019

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Amondi/Okodoi

For the Applicant -

For the Respondent -