

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MISC APPLICATION 560 OF 2016

**EPHRAIM MWANGI WAMWEA (Suing through his mother and next friend
JANE WARUGURU WAMWEA.....APPLICANT**

VERSUS

SIMON KARURI MURIITHI.....RESPONDENT

RULING

This is an application by way of Notice of Motion under section 18 (1) (b) (ii) of the Civil Procedure Act. It seeks the transfer of CMCC No. 133 of 2014 from the Chief Magistrate’s Court at Milimani Commercial Court Nairobi, to Baricho Senior Principal Magistrate’s Court for hearing.

The reasons advanced are that the cause of action arose along Karatina Sagana road. There is a supporting affidavit sworn by the advocate for the plaintiff. The plaintiff and the defendant had appeared before the Senior Resident Magistrate at Milimani Commercial Court on the issue of Jurisdiction who found that the cause of action arose out of the jurisdiction of that court, and therefore declared he had no jurisdiction to hear the case. This application therefore followed.

The application is opposed and grounds of opposition have been filed. It is submitted the application misconceived, frivolous and vexatious. It is also submitted that the lower court did not direct that the defect to be cured by transferring the suit.

I have read submissions by both counsel. The Senior Resident Magistrate at Milimani Commercial Court had jurisdiction to hear the case. The only concern is that it was filed in Nairobi and not Baricho Court. That does not make the suit incompetent. I have reviewed the cited authorities and pleadings in relation to the submissions by counsel. No prejudice has been demonstrated shall befall the defendant if this suit were to be transferred. This court has the power to do so under Section 18 of the Civil Procedure Act.

Accordingly the application is allowed. The suit shall be transferred from the Chief Magistrate’s Court Milimani to Baricho Court for hearing and determination. Costs shall be in the cause.

Dated, signed and delivered at Nairobi this 27th Day of July, 2017

A. MBOGHOLI MSAGHA

JUDGE