



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 559 OF 2006**

**JAZIRA AGENICES (NRB) LIMITED.....PLAINTIFF/RESPONDENT**

**- V E R S U S -**

**HASSAN AHMED ZUBEDI.....DEFENDANT/APPLICANT**

**RULING**

1) Hassan Ahmed Zubedi the defendant/applicant herein, took out the notice of motion dated 30/6/16, the subject matter of this ruling in which he sought for the following orders:

***1. That H.C.C. No. 559 of 2006 Jazira Agencies (NRB) Ltd –vs- Hassan Ahmed Zubedi be transferred from the High Court of Kenya at Nairobi to the Chief Magistrate’s Court Milimani Commercial Courts for hearing and final determination.***

***2. That the costs of this application be provided for.***

2) The motion is supported by the affidavit of Hassan Ahmed Zubedi. When served, the respondent/plaintiff did not file a replying affidavit but filed grounds of objection to oppose the motion. When the motion came up for interpartes hearing, learned counsels entered a consent to dispose of the motion by written submissions.

3) I have considered the grounds stated on the face of the motion, and the facts deponed in the supporting affidavit and the respondents grounds of opposition. I have also considered the rival submissions.

4) The applicant avers that the respondent instituted this suit (formerly as High Court Civil Suit no. 602 of 2000) in the High Court of Kenya at Mombasa which was later transferred to Nairobi High Court at the instance of the defendant. The applicant further avers that the Chief Magistrate’s Court now has pecuniary jurisdiction to hear and determine this suit by virtue of section 7(1) of the Magistrate’s Court Act No. 26 of 2015 which came into operation on 2/01/2016. The applicant further avers that the court diary for 2016 for the High Court Civil Matters has been closed and it is only fair that the matter be transferred to the Chief Magistrate’s Court at Milimani Commercial Courts whose diary for fixing dates was to have been re-opened in August 2016.

5) The applicant states that Justice will be served if the suit is transferred to the lower court so that it can be given an early hearing date and for this reason, the applicant argues that the respondent will not suffer any prejudice if the suit be transferred.

6) The plaintiff/respondent on the other hand is saying that the Applicant’s application is misconceived and bad in law. That on 23<sup>rd</sup> March 2010, partial judgement has already been entered herein to the tune of kshs.4,097,500.00 by Hon. Justice J. W. Mwera, an amount that to date has never been settled by the

defendant/applicant herein. The respondent goes ahead to state that the process of execution is underway and the balance of the claim constitutes a part-heard matter.

7) That the applicant application is made to circumvent and defeat the case of justice by attempting to transfer the entire suit amount and frustrate the execution process; which delay is intentional and continues to frustrate the plaintiff/respondent, the decree holder herein. Therefore allowing the application will greatly prejudice the plaintiff/respondent should the matter be transferred at this late stage.

8) Section 18 of the Civil Procedure Act gives the High Court power to order, at any stage of the proceedings for withdrawal and transfer of any suit pending in any court subordinate to it and either try and dispose it or transfer it for trial or disposal to any court subordinate to it and competent to try it., subject to pecuniary jurisdiction.

9) On the other hand, the Magistrates Court Act is clear under Section 3(2) that the Resident or Magistrates court has countrywide jurisdiction meaning that a suit can be instituted in any part of the Resident or Chief Magistrate's Court in any part of the Republic notwithstanding where the defendant resides or where the cause of action arose.

10) The overriding objective of the Civil Procedure Act and the Rules made there under is to facilitate the just expeditious, proportionate and affordable resolution of the civil disputes governed by the Act. The court is also called upon, in exercising its powers under the Act or interpretation of any of its provision, seek to give effect to the overriding objective specified in Subsection 1 of Section 1A of the Civil Procedure Act.

11) The court under Section 1B of the Civil Procedure Act is mandated to further the overriding objectives of the Act to handle all matters presented before it for the purpose of attaining the following aims: The just determination of the proceedings, the efficient disposal of the business of the court, the efficient use of the available judicial and administrative resources, timely disposal of the proceedings, and all other proceedings in the court, as a cost affordable by the respective parties and the use of suitable technology.

12) Parties knock on the doors of justice seeking for justice which the courts must be ready to administer without undue regard to procedural technicalities and which justice must be administered expeditiously and without undue delay.

13) In the end, I find merit in the applicant's motion and order that HCCC NO.559 of 2006 be transferred to the Chief Magistrate's Court at Milimani Commercial Courts Nairobi for hearing and final determination forthwith. Costs of the motion to abide the outcome of the suit.

**Dated, Signed and Delivered in open court this 18<sup>th</sup> day of August, 2017.**

**J. K. SERGON**

**JUDGE**

In the presence of:

.....for the Plaintiff

..... for the Defendant