



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC. NO. 62 OF 2017

JOSEPH MUTAVA MUTUA.....1ST PLAINTIFF/APPLICANT

FRANCISCA LOKO MUTAVA.....2ND PLAINTIFF/APPLICANT

(suing as the administrators of the estate of the Late **Elizabeth Mbenyi** (deceased))

VERSUS

SHARAD RAO.....1ST DEFENDANT/RESPONDENT

LAWRENCE MBOGO NJERU 2ND DEFENDANT/RESPONDENT

RULING

1. The application dated 13th February, 2017 seeks orders that the Honourable Court be pleased to transfer Nairobi CMCC No. 372 of 2017 from the Chief Magistrate’s Court at Milimani Commercial court to Kiambu Chief Magistrate’s court for trial and determination of the same.

2. The application is predicated on the grounds stated in the application and is supported by the affidavit of Joseph Mutava Mutua, the 1st Applicant. It is stated that CMCC Nbi 372/17 was erroneously filed in Milimani Chief Magistrate’s Court instead of at the Kiambu Chief Magistrate’s Court. That the accident the subject matter of the suit occurred along Njathaini area along Ruiru-Ruaka road in Kiambu County. That a report of the accident was made at Kiambu police station and that the Applicant’s witnesses work in Kiambu County and the limited grant of *ad litem* was obtained at the Kiambu Chief Magistrate’s Court. It is further deponed that the Respondents will not suffer any prejudice if the orders sought are allowed. It is further averred that the summons are yet to be served.

3. The application is opposed. The Respondents filed the grounds of opposition dated 28th February, 2017 which state as follows:

“1. The application is incurably defective and an abuse of due process of the court.

2. The defendants reside in Nairobi within the jurisdiction of the Honourable Court.

3. If the primary suit was erroneously filed at Milimani Law Courts as now claimed, then the suit was defective *ab initio*.”

4. The application was canvassed by way of written submissions. I have considered the said submissions.
5. This court is empowered under Section 18 of the Civil Procedure Act to transfer suits on application by the parties or on it's own motion in accordance with the said provision.
6. Under Section 14 & 15 of the Civil Procedure Act, a suit for compensation or for wrong done to the person or to moveable property may be filed within the territorial jurisdiction of the court where the cause of action arose or where the Defendant(s) resides or works.
7. In the case at hand, it is stated that the cause of action arose in Kiambu county and that the Defendants reside in Nairobi. Thus the Plaintiffs had the option of either filing the suit in Chief Magistrate's Court Nairobi like he did or in the Chief Magistrate's Court Kiambu where the cause of action arose.
8. The Applicants' averment that their witnesses work in Kiambu means access to justice would be easier if the matter is transferred to the Chief Magistrate's Court, Kiambu. There is no evidence of any prejudice that the Respondents will suffer if the suit is transferred.
9. In the upshot, I allow the application. Costs if this application to the Respondents in any event.

Date, signed and delivered at Nairobi this 30th day of Nov., 2017

B. THURANIRA JADEN

JUDGE