



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. CIVIL APPLICATION NO 182 OF 2017

SAMUEL M. ONYANGO t/a S.M.Onyango & Associates Advocates.....APPLICANT

VERSUS

HARRY BOB MOSI t/a Mosi & Company Advocates.....RESPONDENT

RULING

By a notice of motion dated 20.9.16 brought under Article 159 of the Constitution of Kenya, 2010, Sections 1, A, 1B, 3A and 18(1)(a) and (2) of the Civil Procedure Act Cap 21 Laws of Kenya and Order 51 rule 1 of the Civil Procedure Rules 2010 and all enabling provisions; the applicant prays for orders:-

1. THAT this Honourable Court be pleased to transfer **Winam SRMCC NO. 33 of 2016 SAMUEL M. ONYANGO t/a S.M.Onyango & Associates Advocates v HARRY BOB MOSI t/a Mosi & Company Advocates** from Senior Resident Magistrate's Court in Winam Kisumu to Chief Magistrates Milimani Commercial Court for disposal
2. THAT the costs be provided for

The application is based on the grounds among others that the cause of action arose in Nairobi and that witnesses are advocates who reside and work for gain in Nairobi within the jurisdiction of Chief Magistrates Court Nairobi.

The application is supported by an affidavit sworn by the applicant on 25th August 2016 in which he reiterates the grounds on the face of the application. Annexed to the supporting affidavit are copies of pleadings filed in **Winam SRMCC NO. 33 of 2016**.

The application is opposed on the grounds set out in a replying affidavit sworn by the respondent in which he avers that the applicant has raised a similar objection as this one in **Winam SRMCC NO. 33 of 2016**. Attached to the affidavit is a copy of the objection regarding the territorial jurisdiction of Senior Resident Magistrate's Court in Winam to try this suit.

I have considered the notice of motion in the light of the affidavits and annexures on record and on the submission by both counsels. This court called for **Winam SRMCC NO. 33 of 2016** and established that the learned trial magistrate had by a ruling delivered on 6.10.17 dismissed the preliminary objection regarding the territorial jurisdiction of that court that had been raised by the applicant herein.

Section 6 of the Civil procedure act chapter 21 laws of Kenya provides:-

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same

parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

The issue of the territorial jurisdiction of the Senior Resident Magistrate's Court in Winam to try this suit has already been determined by a court of competent jurisdiction. This court therefore declines the invitation to deal with an issue that is directly and substantially the same as the one that has already been determined in **Winam SRMCC NO. 33 of 2016.**

The upshot of this is that the notice of motion dated 20.9.16 is considered and found to be an abuse of the court process. The same has no merit and it is accordingly dismissed with costs to the respondent.

DATED AND DELIVERED THIS 14th DAY OF December, 2017

T.W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix

Applicant - N/A

Respondents - Ms Ayieta