



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISCELLANEOUS APPLICATION NO 70 of 2015

GEORGE MWONGERA MWENDAMERU.....APPELLANT

Versus

LOISE GAKII.....RESPONDENT

RULING

Transfer of Suit

[1] This Court is being asked through the Motion dated 5th October, 2015 to transfer **Nbi CMC Divorce Cause No 96 of 2014** to **Meru Chief Magistrate's Court** for hearing and disposal. The reasons given for applying are:

- (1) That the applicant lives in Meru with the children of the marriage herein who are minors.**
- (2) That the marriage to be dissolved was solemnized in Meru.**
- (3) That the applicant is of less means and by going to Nairobi for the divorce cause only puts her to great expense which is unnecessary in the circumstances.**

[2] The Respondent opposed the application through his Replying Affidavit sworn on 19th October, 2015. Of importance, he averred that at the time of the filing of the Divorce cause herein, both parties were living in Nairobi home, thus, the court in Nairobi is competent to try the cause. He also took issue with the fact that the Applicant has applied in person when she has advocates in the main cause, i.e. M/s. Owaga & Associates Advocates, and whose appointment has not been terminated as per Order 9 of the Civil Procedure Rules. They were therefore of the view that she cannot file this application for transfer of the cause except through the said advocates. The Respondent nonetheless deposed to the fact that he has been informed by his advocate that the applicant's advocates are the major cause of delay in the divorce cause for failing to attend court for purposes of taking a date. And when a date is taken, the said advocate applies for adjournments on the basis of the Applicant's inability to attend court. He further stated that the Applicant has not even annexed receipts to show how many times she attended court so as to claim that she is being subjected to unnecessary costs in defending the cause in Nairobi. According to the Respondent, it is him who will suffer prejudice by the transfer of the cause because his advocates are situated in Nairobi. For these reasons, he beseeched court to reject the request for the transfer of the

divorce cause to Meru.

[3] Parties filed submissions amplifying their respective standpoints I have stated above either for or against transfer of the divorce cause herein.

DETERMINATION

[4] I have carefully considered the application, the reasons given for applying as well as the rival submissions by the parties in this matter. The High Court, as a superior court, has the power to transfer causes from one subordinate court to another for hearing and disposal. The power serves an important purpose in law: to attain the ends of and facilitate access to justice. That is why the court can invoke and exercise the power *suo moto*. And, therefore, if transferring a matter is expedient, lawful and an enabler of access to justice, the court will not be prevented from doing so simply because the application has not been made by the advocate on record or because the Respondent's advocate is situated outside the proposed place of hearing. Now, I should only ask: Are conditions for transfer of suit present in this case? First, it has not been denied that the marriage to be dissolved was solemnized in Meru; that is the basic and important consideration in this application for transfer. Other considerations include the fact that the applicant also lives in Meru, and with the issues of the marriage who are minors. In these circumstances, although not invariable consideration, the fact of the Applicant is of a lesser means also becomes relevant. For all purposes and intents, the ends of and access to justice would be served by transferring the matter in question from Nairobi to Meru for hearing and determination. I do not see any prejudice that will be visited upon the Respondent especially given the fact that advocates in Kenya are licenced to practice anywhere within the Republic of Kenya including Meru County. Accordingly, I order that the Nairobi Chief Magistrate's Divorce Cause No. 96 of 2014 shall be transferred to Meru Chief Magistrate's Court for hearing and disposal. Each party shall bear own costs of the application. It is so ordered.

Dated, Signed and Delivered in open court at Meru this 19th January, 2016

F. GIKONYO

JUDGE

In the presence of;

Applicant

Mwenda/Mark – C/c