



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI HIGH COURT

MISC. NO. 226 OF 2015

ABDI NOOR MOHAMMED SHEIKH.....PLAINTIFF

VERSUS

TRIPPLE EIGHT LIMITED.....1ST DEFENDANT

WAJIR COUNTY COUNCIL2ND DEFENDANT

RULING

1. The Applicant before the Court is a Chamber Summons dated 22nd may 2015 filed by the Plaintiff/Applicant. The application seeks to secure the following Orders;
 - a. **That the Plaintiff be granted leave to substitute the name of the 2nd Defendant being Wajir County Council with County Government of Wajir.**
 - b. **That Civil suit number 5366 of 2012 pending at the Chief Magistrate's Court at Nairobi and all proceedings pending therein be transferred to the Chief Magistrate's Court at Wajir for trial and final determination.**
 - c. **That the costs of this application be provided for.**
2. The application is premised on the grounds set out therein and is supported by affidavit sworn on 22nd May 2015, and a further affidavit sworn on 3rd November, 2015.
3. The Plaintiff/Applicant's case is that the 2nd Defendant herein ceased to exist following the operationalization of the County Government Act 2012, and so it is in the interest of justice that the 2nd Defendant be substituted with County Government of Wajir. The Plaintiff/Applicant 's case is that the cause of action arose in Wajir County where the Plaintiff and the 2nd Defendant reside and work for gain, and that the Chief Magistrate's Court at Wajir now has the monetary jurisdiction to handle this matter.
4. The application is opposed by the 1st Defendant who filed Grounds of Opposition dated 1st July 2015, and a Replying Affidavit sworn by **PENINA OLOO** on 6th November 2015. The Respondent's case is that the application is incompetent and lacks merit, and that the court in Nairobi has the jurisdiction to hear and determine the matter.
5. With the leave of the court, parties filed submissions, which were highlighted in court on 9th November, 2015.
6. I have considered the application and the opposing submissions. In my view, the only issues for determination are whether it would be convenient to all the parties to transfer this suit to Wajir; and whether the prayer for substitution of the 2nd Defendant can be granted.

7. It is no denying that both the Magistrate's court in Nairobi and the Wajir Court have the jurisdiction to hear this matter. The 1st Defendant who had initially denied that the Magistrate's court in Nairobi did not have the jurisdiction has since changed that position in the Replying Affidavit of **PENINA OLOO**.
8. Section 14 of the Civil Procedure Act spells out where to file a suit. A suit may be instituted where the wrong occurred or where the Defendant resides. The Plaintiff complied with this direction, but now submits that at the time of filing the suit, there was no court in Wajir with a monetary jurisdiction of Kshs.4,000,000/=. This situation has changed and the Principal Magistrate's Court in Wajir has the necessary jurisdiction.
9. Having carefully considered the level of inconvenience to the parties, this court finds that the parties advocates are all in Nairobi, the Defendants offices and witnesses are also in Nairobi. The Doctor who examined the Plaintiff to verify his injuries is in Nairobi. Weighing all options and especially considering that both the Nairobi and Wajir courts have the jurisdiction, the court declines to interfere with suit by way of transferring it. The objectives for fast and expeditious dispensation of justice at least cost to the parties as envisaged under **S. 1A 1B** and **3A** of the Civil Procedure Act would not be satisfied if this case was transferred to Wajir.
10. On the issue of substitution of the 2nd Defendant, it is the finding of this court that this court is not seized of the matter. An appropriate Applicant may be made to the Lower Court for consideration.
11. The upshot of the above is that the Plaintiff/applicant's application dated 22nd May 2015 is dismissed with costs to the 1st Defendant/Respondent.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 4th DAY OF JANUARY 2016.

E. K. O. OGOLA

JUDGE

PRESENT:

N/A for Plaintiff

N/A Defendant

Teresia - Court Clerk