



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

MISCELLANEOUS CIVIL APPLICATION NO. 15 OF 2016

FRED MANYALLAH.....PLAINTIFF/APPLICANT

Versus

PATRICK NGUGI GITAU.....DEFENDANT/RESPONDENT

RULING

This notice of motion dated 7th March 2016 and filed in court on 17.3.2016 is brought under Order 51 Rule 1 of the Civil Procedure Rules 2010 and Section 1A, 1B, 3A, 4 and 18(a) of the Civil Procedure Act and Rules.

In it the plaintiff/applicant seeks an order to transfer suit Mavoko PMCC No. 566 of 2015 to the Chief Magistrate's Court at Kajiado for hearing and determination. The application is supported by an affidavit sworn by one Ratemo Edward Momanyi. The application was not duly served.

Upon consideration of the matter I am of the considered view this court has powers to deal with the matter in order to expedite the adjudication and resolution of the suit.

Brief facts issues leading to this application by the plaintiff are as follows:

- (1) The plaintiff filed a civil suit at Mavoko registry referenced as PMCC No. 566 of 2015 seeking damages arising out of a motor vehicle traffic accident.**
- (2) That according to the pleadings the initial investigations indicated that the said accident occurred along Athi River township.**
- (3) That the plaintiff on further due diligence and investigations confirmed the accident to have taken place along Athi River – Isinya road within Kajiado County.**

I have considered the application and the supporting affidavit by the plaintiff/applicant. The matter before the court is simply whether in the circumstances of this case, the court ought to exercise discretion to transfer Mavoko PMCC No. 566 to the Chief Magistrate's Court at Kajiado.

The power of this court to transfer suits is donated by Section 17 of the Civil Procedure Act as read together with Section 18.

Section 17 reads as follows:

“Where a suit may be instituted in any one of the two or more subordinate courts, and is

instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court and the High Court after considering the objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed.”

Section 18 of the Civil Procedure Act provides as follows:

“(1) on the application of any of the parties and after notice to the parties and after hearing each of them as desire to be heard, or if its own motion withdraw such notice, the High Court may at any stage:

(a) Transfer any suit, appeal or other proceedings before it for trial or disposal to any court subordinate to it and competent to try or dispose of the suit; or

(b) Withdraw any suit or other proceedings pending in any court subordinate to it and thereafter:

(i) Try or dispose of the same; or

(ii) Transfer the same for trial or dispose to any court subordinate to it and competent to try or dispose of the same; or

(iii) Re-transfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceedings has been transferred or withdrawn as aforesaid the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either try it or proceed from the point at which it was transferred or withdrawn.”

In applying the legal provisions of Section 17 and 18, Section 1A, 1B and 3A of the Civil Procedure Act to the application before me and supporting affidavit, this court has to establish whether the plaintiff/applicant has satisfied the criteria under Section 17 and 18 of the Civil Procedure Act.

In considering the criteria under the said sections on transfer of suits from one subordinate court to another for trial the very elements to be satisfied are:

i. The applicant has shown that the suit/case sought to be transferred or withdrawn was filed before a court which had jurisdiction.

ii. The applicant must show that his application for transfer is motivated by a desire to achieve justice and not obstruct or delay the course of justice.

From the affidavit evidence captured I find that Mavoko Principal Magistrate’s Court had jurisdiction to try and dispose of the matter sought to be transferred to Kajiado. What can be deduced from the statement of claim is that the cause of action arose within the local proximity of Kajiado Chief Magistrate’s Court.

The primary consideration is whether the transfer will occasion the efficient and timely disposal of the proceedings at a cost affordable to the respective parties to the suit.

In that respect if the alleged accident, the subject matter of the claim in tort occurred along Isinya – Athi River Road, any access or proximity for witnesses would be the Chief Magistrate’s Court at Kajiado.

There is ample evidence from the record that the overriding objective under Section 1A of the Civil Procedure Act would be achieved in having the transfer of Mavoko PMCC No. 566 of 2015 to Kajiado Court.

RESOLUTION

In the result I find the notice of motion by the applicant has merit and the same is allowed in the following terms:

- a. The civil suit referenced Mavoko PMCC 566 of 2015 be transferred to the District Registry at Kajiado for hearing and disposal.**
- b. That the Deputy Registrar do issue and extract an order to transfer the suit upon the Executive Office Mavoko Law Courts.**
- c. That a new number be issued by the Executive Officer Kajiado with a corresponding notice of the order of transfer to the parties accordingly on receipt of the original file.**
- d. Costs of the application be in the cause.**

It is so ordered.

Dated, delivered in open court at Kajiado on 30th day of May, 2016.

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R. NYAKUNDI

JUDGE

Representation

Ms Mageto holding brief for Ratemo for the applicant

Mr. Mateli Court Assistant present