



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

MISCELLANEOUS CIVIL APPLICATION NO. 10 OF 2016

PADA SECURITY AND ALARM SYSTEMS.....PLAINTIFF/APPLICANT

Versus

PAUL GAYA OTIENO T/A

THREE SIXTY DEGREES ENTERPRISES.....DEFENDANT/RESPONDENT

RULING

Before me is a notice of motion by the applicant expressed to be brought under Section 18, 3A of the Civil Procedure Act and Order 51 Rule (1) of the Civil Procedure Rules and all other enabling provisions.

The motion dated 12.2.2016 and filed in court on 18.2.2016 prays for an order:

That the Civil Suit No. 581 of 2015 be and is hereby withdrawn from the Principal Magistrate's Court at Mavoko and transferred to the Senior Principal Magistrate Court at Kajiado for hearing and final determination.

It is stated to be based on the grounds that:

- (1) That the suit was filed on 22.7.2015 and summons to enter appearance served upon the defendant at Kitengela.**
- (2) That an internal memo was later issued by the Magistrate Mavoko with a direction that all matters arising within Kitengela to be filed at the Kajiado Law Courts.**
- (3) That during the filing of the suit at Mavoko registry there was no such instructions and hence plaintiff/applicant had no knowledge.**
- (4) That the cause of action arose within Kitengela.**

The application is supported by an affidavit sworn by one DR. NJOROGE KIMANI an advocate for the plaintiff. The defendant/respondent was served with the notice of motion but failed to enter appearance or file a reply to the application.

At the hearing of the application Mr. Macharia counsel for the applicant relied on the notice of motion, supporting affidavit and grounds on the body of the application.

Before making a determination on the main issue of transfer it is convenient at this stage to state the applicable law:

Under Section 18 of the Civil Procedure Act the High Court is vested with unfettered discretion. The section provides as follows:

“(i) 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.”

It is indisputable that the Magistrate’s Court Act No. 26 of 2016 confers jurisdiction upon Magistrate’s Court.

Under section 5:

“A Magistrate Court shall be duly constituted when presided over by either a Chief Magistrate, Senior Principal Magistrate, Principal Magistrate, Senior Resident Magistrate or a Resident Magistrate”.

Section 6 and 7 specifically provides for civil jurisdiction of a Magistrate Court in proceedings of a civil nature with a restriction on the value of the subject matter.

“The court when presided over by a Chief Magistrate has a value not exceeding shillings twenty million, the Senior Principal Magistrate a limit of Kenya Shillings Fifteen Million, the Principal Magistrate a limit of pecuniary jurisdiction of Ten Million.

In the case of a court presided over by a Senior Resident Magistrate a limit of Kenya Shillings Seven Million and for the Resident Magistrate an amount not exceeding five million.”

Besides the civil jurisdiction the Magistrate’s Court Act also confers jurisdiction on matters under African Customary Law to claims relating to violation of human rights, Probate and Administration.

Section 13 (1) of the Act provides for sitting of a Magistrate Court to be within the local limits of its jurisdiction, but it shall so far as practicable be at the place designated in the gazette.

This provision is fortified by Section 15 of the Civil Procedure Act. The same provides thus:

“Subject to the limitation aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction:

(a)The defendant, or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business or personally works for gain; or

(b)Any of the defendants (where there are more than one) at the time of commencement of

the suit.....provided either the leave of the court is given or the defendant who do not resides or carry on business or personally work for gain, as aforesaid acquiesce in such institution; or

(c) The cause of action, wholly or in part arises.”

To the above provisions of the law I should add and I am of the considered view that a distinction should be drawn between jurisdiction of Magistrates extending all over the county and the aspect that any given time they are located within a local administrative unit in order to actualize access to justice.

Under Section 2 a Court Station means the place at which one or more Magistrates Court are located. This location and jurisdiction provided by the Act is to advance the overriding objective of the court to facilitate just, expeditious, proportionate and accessible judicial services under Section 1A of the Civil Procedure Act. This is to mitigate one of the barriers on access to justice which has to do with proximity and physical access to courts by litigants.

In fulfilling the constitutional mandate the Chief Justice has caused establishment of subordinate courts within the 47 counties of Kenya for easier access to and administration of justice. Access to justice can be hampered if litigants have to travel long distances to file their claims.

It is clear from the notice of motion and supporting affidavit that the defendant resides and operates a business at Kitengela. However the plaintiff exercised discretion and opted for Mavoko Law Courts and registered his claim for adjudication. There is no dispute that Mavoko Court had jurisdiction to hear and resolve the dispute.

In the circumstances of the case the Principal Magistrate Court, Mavoko issued a circular to litigants and advocates that all such matters arising from Kitengela be transferred to Kajiado Law Courts during the pendency of the plaintiff suit.

DECISION

All in all the interest of justice and applicable law is on the side of the plaintiff. The plaintiff has demonstrated sufficient reasons for this court to invoke the provisions of Section 18 of the Civil Procedure Act to transfer the civil suit filed at Mavoko to Kajiado Court.

The upshot - plaintiff application is hereby allowed in the following terms:

- a. The Mavoko PMCC No. 581 of 2015 be and is hereby withdrawn and transferred to the Chief Magistrate’s Court at Kajiado for hearing and final determination.**
- b. The costs of this application await the outcome of the main suit in any event.**
- c. The Deputy Registrar to extract the order and serve it upon Executive Officer Mavoko for action.**

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

Mr. Chege for Njoroge the applicant

Mr. Mateli Court Assistant present