



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CIVIL CASE NO.47 OF 2014**

**MUMIAS SUGAR CO. LTD.....PLAINTIFF**

**VERSUS**

**MOSES NYONGESA JUMA.....1<sup>ST</sup> DEFENDANT**

**JAMES MAKOKHA ANEKEYA .....2<sup>ND</sup> DEFENDANT**

**DORCAS CHEPSOI .....3<sup>RD</sup> DEFENDANT**

**RULING**

**The Application**

1. What is before me for determination is the Notice of Motion dated 14/02/2014. The same is brought pursuant to Sections 1A, 1B, 3, 3A, 15, 17 and 18 of the Civil Procedure Act Cap 21 Laws of Kenya and Order 51 Rule 1 of the CPR and all other enabling provisions of the law. The applicant seeks stay of proceedings in Butere SPM CC Nos.180 and 181 of 2013 pending *interpartes* hearing of the application and also prays that the said suits be transferred from Butere SPM's Court to Mumias PM's Court for hearing and determination.
2. The application is supported by the applicant's undated affidavit sworn by Amuhaya Barasa the applicant's Legal Officer. It is also premised on 13 grounds set out on the face of the application. The applicant contends that the said suits should be transferred to Mumias law Courts because the accident in question was reported to Mumias Police Station and that it also occurred at Mung'ang'a along the nucleus murram road which is within Mumias District. The applicant further contends that several other suits arising out of the same accident have been filed at Mumias law Courts. Mention is made of Mumias PMCC No.295 of 2012 between William Okumu Masinde and Mumias Sugar Co. Ltd with Dorcas Chepsoi (the Interested Party in these proceedings) as third party. The deponent also avers that there are filed before the Mumias Court SPM CC Nos.294 to 370 of 2012 and numbers SPM CC 22 to 33 of 2013. The deponent also says that Mumias SPM CC No.295 of 2012 was selected as the test case in determining the liability between the applicant and the interested party Dorcas Chepsoi who is the registered owner of motor vehicle Registration number KAM 367L. The applicant therefore prays that in the interest of justice all the related cases ought to be heard by the Mumias Court.

**Response to the application**

3. The application is opposed vide the replying affidavit sworn by Moses Nyongesa Juma on 14/04/2014. He contends that this application is an afterthought and it is intended to delay the timely determination and disposal of Butere SPM CC No.180 of 2013 in which he is the plaintiff.

That the alleged Mumias suit has already been heard and determined in favour of the plaintiff therein and therefore that there is nothing to wait for and in any event the applicant did not invite respondent's Counsel to participate in determining which of the various suits would be a test suit. The deponent also says that the prayers sought by the applicant are vague as it is not clear whether it is transfer or consolidation of suits that the applicant seeks.

4. It is also contended on behalf of the respondents that this honourable Court has no jurisdiction to grant the orders sought because the suits sought to be transferred were filed in Courts which lacked jurisdiction and finally that all the parameters governing transfer of suits tilt in favour of the respondents. He urged the Court to dismiss the application with costs.

### **Submissions**

5. Both parties filed and exchanged written submissions together with authorities. There appears to be agreement between the parties that the accident in issue occurred along Mung'ang'a area within Mumias District but Counsel for the respondents contends that this is not a factor to be considered when a Court is deciding whether or not to transfer a suit from one Court to another. I have carefully read and considered the submissions in detail.

### **Issues for Determination**

6. When all is said and done, the one issue that falls for determination is whether the applicant has met the principles for the granting of the orders sought. This issue is to be determined against the backdrop of the applicant's contention that the two suits sought to be transferred were filed against the provisions of the law with regard to place of institution of suit as provided under the Civil Procedure Act Cap 21 Laws of Kenya and the Civil Procedure Rules as well as the Magistrates Act Cap 10 Laws of Kenya.

### **Analysis and Determination**

7. After carefully reading through the pleadings and the submissions and upon due consideration of the relevant provisions of the law including the cited case law, I have reached the humble conclusion that the applicant is not entitled to the orders sought. First and foremost the applicant contends that the suits sought to be transferred were filed in the wrong Court. If that be the case, and indeed it appears to be so, this Court cannot transfer such suits from SPM's Court at Butere to Mumias Law Courts. See **Kenya Seed Co. Ltd -vs- Joseph Bosire C.A No.72 of 2002**. (unreported). Further and as rightly submitted by Counsel for the respondents this is not the real issue when a Court is considering whether or not to transfer a case. I subscribe to the view that Section 3(2) of the Magistrate's Court shall have jurisdiction throughout Kenya. See the case of **Mohamed Shaban -vs- George Mwangi Karoki Bungoma HC Misc. Civil application NO.13 of 2002**.
8. The second reason why the applicant's application must fail is that the applicant has not come to Court with clean hands. In other words the applicant has fallen foul to the maxim "he who seeks equity must do equity". It has come out from the replying affidavit that the applicant did not disclose in its pleadings that Mumias PMCC No.295 of 2012 has in fact already been determined in favour of the plaintiff therein. The applicant made it appear as if that suit is still pending before the Mumias Court when that is not the position.
9. I have also taken a close look at Sections 15 and 38 of the Civil Procedure Act and it does appear to me that the applicant has not given cogent reasons why the two suits should be transferred to Mumias Law Courts. In any event, Section 38 allows this Court the discretion to grant or not to grant the orders sought.
10. I have also carefully considered the issues of balance of convenience expense and interest of justice and particularly Sections 1A and 1B of the Civil Procedure Act which provide that the duty of Courts should be to ensure that Courts attain the efficient use of the available judicial and administrative resources. In this regard, I hold that it would not serve the purposes of the aforesaid Sections if the order herein is granted.

## **Conclusion**

11. In the final analysis, I find and hold that the applicant's Notice of Motion dated 14/02/2014 lacks merit and the same is hereby dismissed with costs to the respondents. Interim orders earlier granted herein are hereby set aside.
12. Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this

22<sup>nd</sup> day of June 2016.

**RUTH N. SITATI**

**J U D G E**

In the presence of:

Mr. Nyikuli for Omwenga (present) for Applicant

Mr. Abok (present) for Respondents

Mr. Lagat - Court Assistant