



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC. APPLICATION NO. 68 OF 2015

REAL INSURANCE CO. LTD.....PLAINTIFF

Versus

ABDIA DIRIA ADOW.....RESPONDENT

RULING

Transfer of suit

[1] By application dated 28th September, 2015, the applicant seeks the transfer of Maua CMCC NO 149 of 2015 to Chief Magistrate Court at Nairobi for hearing and disposal. The case to be transferred is between the Respondent and the Applicant as plaintiff and defendant respectively. The said application is expressed to be made under Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3A, 15, 17 and 18 of the Civil Procedure Act. It is grounded on the reasons set out in the application and deposed to in the Affidavit of John Maina Ngechu, Advocate. I understood the Applicant to be saying that the suit should be transferred because; (1) the cause of action in the suit relates to an insurance policy which was effected within Nairobi County; (2) the applicants' Principal and Registered office is situated within Nairobi County; (3) the applicant has no connection with Maua which may justify the filing of the suit at Maua; and (4) filing such suit at Maua will be prejudicial to, as it will make the applicant to suffer unnecessary costs in defending it. Accordingly, they requested for the suit to be transferred to Nairobi.

[2] The Respondent opposed transfer of the suit to Nairobi and filed a Replying Affidavit to that effect. The Respondent deposed that the cause of action arose at Nyeri as the contract of insurance was consummated at Nyeri. In any case, the Respondent argued that the Applicant carries out business all over Kenya and more specifically at Maua Town and Meru Town where it has offices at Gaciongo and Makutano, respectively. Therefore, the Respondent was of the view that the Chief Magistrate's Court at Maua has jurisdiction to hear the suit filed. They urged the court to refuse the request for transfer of the suit for being unmerited.

DETERMINATION

Power to transfer suit

[3] The High Court as a Superior Court has power to transfer any suit from one magistrate court to another or to itself for hearing and disposal. The said power is enacted in Section 17 and 18 of the Civil Procedure Act. I have considered the arguments presented and the pleadings filed; I do not have any reasons to doubt that the Applicant carried out insurance business all over Kenya and it has offices in various towns including Maua and Meru. There is also no doubt that lawful businesses of insurance are

transacted and contracts of insurance are signed by the insured at these branch offices. Therefore, it would be quite imprudent for an insurance company to insist that a rule of law should be formulated to the effect that they can only be sued in Nairobi where their Principal registered offices are situated. Such proposition would be most oblivious of the fact that a suit could be filed in a court within whose jurisdiction the cause of action arose; it would also be a great hindrance of access to justice and will certainly occasion unnecessary costs on a great number of people who may have claims against insurance companies. Accordingly, I take the view that, in determining the place to sue such company with lawful offices in several places in Kenya especially insurance companies, it is fair and just for courts to consider the place where the contract was transacted or the cause of action arose. In such case, I think the proper yardstick would be to treat this case as *suits which may be instituted in more than one court*. In this case, the Applicant's principal office is in Nairobi but with branch offices in Nyeri and Maua; the contract was signed by the insured at Nyeri – at least from the plaint. The alleged wrong which constitutes the cause of action herein, is an accident which occurred along Maua-Nyeri Road. Accordingly the suit arising out of the said policy of insurance based on the accident which occurred along Maua-Nyeri Road could be instituted in either at Nairobi or Nyeri or Maua at the option of the Plaintiff. The company herein has offices at Maua and so, in the circumstances of this case, I do not see any reason of transferring the suit herein to Nairobi. In the upshot, I dismiss the application dated 28th September, 2015. Case number MAUA CMCC NO 149 of 2015 between ABDIA DIRIA ADOW vs REAL INSURANCE CO. LTD will be heard and determined by a court of competent jurisdiction within the hierarchy of the Chief Magistrates Court at Maua. Each party shall bear own costs of the application. It is so ordered.

Dated, signed and delivered at Meru in open court this 22nd September, 2016.

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F. GIKONYO

JUDGE

In the presence of:

Mr. Kaimba advocate for Mr. Githae advocate for applicant

Mr. Ondari advocate for Mr Mbogo advocate for respondent.

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F. GIKONYO

JUDGE