



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**MISC. APPLICATION NO. 45 OF 2014.**

**A K M.....APPLICANT**

**VERSUS**

**A N K.....RESPONDENT**

**RULING**

1. The applicant through an application dated 16<sup>th</sup> September, 2014 pursuant to Section 18(1) and 3A of the Civil Procedure Act sought the following Orders:-
  - I. ***That this Honourable court be pleased to certify this matter urgent in the first instance.***
  - II. ***That this Honourable Court be pleased to make orders for the transfer of Divorce Cause No. 3 of 2014 from Maua Law Courts to Meru Law Courts.***
  - III. ***That costs be in the cause.***
2. The application is premised on the grounds on the face of the application inter alia; that the respondent is a Senior Chief within the area where the court is located and the respondent a Senior Primary School teacher within the area, that the petitioner is very close to the court and the respondent fears justice will not be done; that the respondent is opposing the divorce and it requires a neutral ground to ventilate all the issues to arrive to a just conclusion and that no party will suffer any prejudice by having the matter transferred to Meru, because it's the County Headquarters.
3. The applicant further relies on the supporting affidavit dated 16<sup>th</sup> September, 2014 which reiterates the grounds on the face of the application adding that he is apprehensive if the matter proceeds at Maua Law Courts he shall not get justice. He has also deponed that the first court disqualified itself on the grounds that the petitioner is very much known, to the court officers. The applicant further depones that the respondent has openly told him she would get the divorce whether the applicant opposed the same or not so long as the matter is heard at Maua.
4. The respondent on the other hand has filed a replying affidavit dated 15<sup>th</sup> October, 2014 opposing the application on the ground that Maua court is the nearest court with jurisdiction and that the applicant is not special than Chief Justice who comfortably attends court without special preferences of courts. She urges the Magistrate who disqualified himself did so on the grounds that he was handling a related criminal case where she had complained against the applicant's illicit lover for threatening her and whose actions form a limb of matrimonial offences complained of. She averred further if the matter is transferred she shall be prejudiced on the grounds that the

case will be delayed and will incur enormous expense as all her witnesses hail from within walking distance of Maua Law Courts.

5. I have carefully considered the application, affidavits in support and in opposition as well as the oral submissions by both counsel. The issue for consideration is whether the applicant has established sufficient reasons to enable this court order transfer of the Maua CMCD No. 3 of 2014 to Meru Chief Magistrate's court.
6. Section 18(1),(b),(ii) of the Civil Procedure Act provides:-

***18. (1) on the application of any of the parties and after notice***

***To the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—***

7. In the instant application the applicant is seeking transfer of the Divorce Cause from Maua because he is apprehensive that he will not get justice because the petitioner is very much known to the court officers and that the petitioner has been telling the applicant that she will win her case so long as the matter is heard at Maua. The allegations in the applicant's affidavit have not been controverted by the respondent.
8. I find that the apprehension by the applicant whether are justified or not the court should in such situations be slow in rejecting the application for a transfer. There may be no truth at all on the said allegations but my view is that where a party alleges apprehension that justice may not be done if a matter proceeds at a given place and the opponent proudly pronounces to his/her adversary that a decision would be in his/or her favour so long as the matter is before such station, the court has the duty to ensure that justice is not only done but is seen to be done. The court is further obligated to facilitate fair trial and encourage creation of level grounds for litigation. The apprehension is always in one's mind and there is no better way in which the same can be expressed other than by way of affidavits. The court is therefore unless it is shown that the application is intended to tarnish the good records of officers of the court or is based on malice bound to grant an application for transfer of the suit.
9. In view of the foregoing I find merits in the applicant's application and I proceed to make the following orders:-
  - i. ***That Maua CMDC No. 3 of 2014 pending hearing at Maua Law Courts is withdrawn and transferred for trial and disposal by the Chief Magistrate court at Meru.***
  - ii. ***Costs be in the cause.***

DATED, SIGNED AND DELIVERED AT MERU THIS 22<sup>ND</sup> DAY OF JANUARY, 2015.

**J. A. MAKAU**

**JUDGE**

***Delivered in open court in the presence of:***

***1. Mr. Kirima for the applicant***

***2. Mr. Kirimi Mbogo for the respondent.***

**J.A. MAKAU**

**JUDGE**