



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. APPLICATION CAUSE NO. 16 OF 2015

WAWERU PETER.....1ST APPLICANT

EDWIN NGUGI.....2ND APPLICANT

VERSUS

VITALIS OUMA LEO.....1ST RESPONDENT

MASH BUS SERVICES LTD.....2ND RESPONDENT

AMINA HAMZA MOHAMMED.....3RD RESPONDENT

RULING

This is an application for stay of proceedings in **Kisumu CMCC 29 of 2013** and for transfer of the same to Naivasha Chief Magistrate`s court for hearing and determination. The gist of the application is that the cause of action which is a motor vehicle accident occurred along the **Gilgil-Nakuru** Road hence within the geographical jurisdiction of the **Chief Magistrate`s court in Naivasha**.

The application is faulted for being brought under the wrong provisions. It is contended that section **19 and 63(e)** do not come to the aid of the applicants and I agree. It is also contended that the applicants herein are strangers to the suit that they seek to have transferred and as such they are incapable of obtaining the orders sought and that moreover **Section 18** upon which this application remains to be brought under does not provide for transfer by the High Court of a suit from one subordinate court to another. It may indeed appear that the applicants are strangers to **Kisumu CMCC 29 OF 2013**. However, there is evidence that they were parties in Naivasha CMCC 720 of 2011 arising from the same accident, hence same cause of action, having been enjoined as third parties by the defendants therein. Indeed at **paragraph 6** of their written statement of defence in Kisumu **CMCC 29 of 2013** the defendants also express the intention to enjoin the applicants as third parties and seek leave to do so. It would appear that that was done as there is on record a defence filed by them on 14th August, 2014. For all intents and purposes they are not strangers to the suit. Moreover, it is trite that a suit ought to be filed in the nearest court to the place the cause of action arose. ("See section 15(c) of the **Civil Procedure Act**") The accident the subject of **CMCC 29 of 2013** having occurred along the Gilgil-Nakuru Road the nearest court would be Naivasha Chief Magistrate`s court or even Nakuru Chief Magistrate`s court but not Kisumu. No explanation has been given for filing this suit in Kisumu. **Section 18** of the **Civil Procedure Act** may not empower this court to move this case from one subordinate court to another but **Section 17** of that Act does. By virtue of Order 51 rule 10(2) of the Civil Procedure Rules, the citing of the wrong provision ought not to vitiate the application.

Accordingly I allow the application and make orders as follows:-

- a) That the hearing of **Kisumu CMCC 29 of 2013** be and is hereby stayed.
- b) That **Kisumu CMCC 29 of 2013** be and is hereby transferred to Naivasha Chief Magistrate`s Court.
- c) That the costs of this application shall be costs in the suit.

E.N. MAINA

JUDGE

Dated, signed, and delivered at Kisumu this.26th day of March, 2015

In the presence of:-

Mr. K`opot for the applicants

Mr. Otieno for the respondents

Moses Okumu- Court Assistant