



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS APPLICATION NO. 494 OF 2014

1. MICHAEL PIUS KIMUNGUI

2. SIMIYU WANYONYI.....APPLICANTS

VERSUS

ISAAK CHEPWECK CHEBONYA.....RESPONDENT

RULING

1. The Applicant filed a notice of motion dated 16<sup>th</sup> June, 2014 seeking that Nairobi CMCC No. 1495 of 2014 be transferred to Bungoma Chief Magistrate's court for hearing and disposal. The application is brought under section 12,15,18 and 3A of the Civil Procedure Act Cap 21(*the Act*). It is premised on the grounds on the face of the application and the supporting affidavits of the Applicants. It is their case that the cause of action arose within Bungoma County and that the parties to the said suit are residents of Bungoma County. They lament that having the matter in Nairobi will drain them financially.

2. The application was opposed by the replying affidavit of the Respondent. Who contended that the subject matter of CMCC No. 1495 of 2014 is compensation for defamation which was aired on Royal Media Services Sulwe Radio FM Nairobi. That section 14 of the Act is to the effect that a suit for compensation for wrong done to a person can be filed within the local limits of the jurisdiction of another court at his option. That all the relevant material and witnesses shall be from Royal Media Services based in Nairobi. He alleged that the 1<sup>st</sup> Applicant who is a senior government officer has vowed to use all his local connections as a chief to make sure that justice is not done if he files the case within his local jurisdiction which makes him apprehensive on whether justice will be done or seen to be done. He stated that his fears have been confirmed as all his sons have been arrested and charged in Kimilili Criminal Case No. 587 of 2014 through the instigations of the Applicants who are complainants in the criminal case. He contended that the applicants have not demonstrated any prejudice that may be occasioned to them if the matter is heard in Nairobi.

3. The application was canvassed by written submissions. Parties basically reiterated their depositions. To buttress their case, the Applicants cited **Samuel Kuria Kimani v. BOG Trustees PCEA Makongeni Church (2014) eKLR**, **Sarah Kanyi Mugo v. Samuel Njomo Muriithi (2005) eKLR** and **Justus Kyalo Mutunga v. Labh Singh Harnam (2012) eKLR**. In Samuel Kuria and Justus Kyalo's case (supra), the applications were allowed based on the issue of territorial jurisdiction while in Sarah Kanyi's case, Okwengu J(as she then was), cited Jaziira Agencies Nairobi Ltd v. Dolphin Stationers ltd Civil Suit No. 477 of 1998 where Waki J(as he was then) was of the view that where there is no provision of law in relation to matters of transfer of suits from one high court to another, the court would invoke its inherent powers which are unlimited, This case is not applicable here since it involved the transfer of a suit from one subordinate court to another.

4. CMCC No. 1495 of 2014 is a suit governed by section 14 of the Civil Procedure Act. Which provides as follows:-

*"Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides*

***or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of those courts."***

5. Although I am not satisfied with the Respondent's allegations that the Applicants are likely to interfere with the dispensation of justice in this matter, he is favoured by the above provision in that the relevant material and witnesses shall be from Royal Media Services based in Nairobi. Additionally, the Applicants have not established that they shall be aggrieved and that they shall not access justice at Nairobi. The upshot is that this application lacks merit and is hereby dismissed. Costs shall abide the outcome of the suit.

Dated, Signed and Delivered in open court this 24<sup>th</sup> day of April, 2015.

J. K. SERGON

**JUDGE**

In the presence of:

..... for the Plaintiffs

..... for the Defendants