

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. APPLICATION CASE NO. 39 OF 2014

ALLAN FWAMBA MALILO APPELLANT

VERSUS

TAI CONSTRUCTION CO. LTD..... RESPONDENT

RULING

1. Before court is an application dated 9th April 2014 seeking to transfer Bungoma CMCC no. 138 of 2010 to Kakamega Law Court for hearing and determination on the grounds that the Bungoma Chief Magistrate's Court has no territorial jurisdiction as the action arose in Kakamega. The application was supported by the affidavit of Allan Fwamba Malilo the appellant.

2. The facts of the matter are that by a plaint dated 19th February 2010 the appellant filed suit in Bungoma Chief Magistrate's Court against Tai Construction Company Limited ,the defendant therein, claiming damages arising from an accident along Kakamega road. A defence was filed which inter alia took issue with the court's jurisdiction.

3. At the hearing of the application only the Appellant's counsel appeared. However an affidavit of service was filed indicating that the application herein was duly served upon the respondent.

4. The only issue for determination herein is whether or not this suit is transferable? In arguing for the orders being sought counsel for the applicant gave the sole reason for the transfer as being lack of territorial jurisdiction by the Chief Magistrate's Court, Bungoma as the cause of action arose in Kakamega.

5. There are several authorities on this matter and the same is by now settled law. The High Court no doubt has wide powers to transfer suits to courts that have territorial and pecuniary jurisdiction under Section 18 of the Civil Procedure Act. Notably if the case to be transferred is competent in the first place.

Ringera J (as he then was) addressed an issue a similar issue to the one before this court. In the case of **Omwoyo Vs. African Highlands and Produce Co. Ltd. [2002] 1 at 199** where he stated;

“That being the case, the sole issue for determination is whether this court has jurisdiction to transfer a suit from a court which is seized if it has no jurisdiction to determine it to a court vested with jurisdiction.”

“The Principle of Law to be gleaned is that the High Court cannot exercise its discretion to transfer a suit from one court to another if the suit is filed in the first place in a court which does not have pecuniary and/or territorial jurisdiction to try it.”

6. Guided accordingly I am of the view that there is no matter to be transferred as the suit before the Chief Magistrate's Court, Bungoma was a nullity abnitio. The court had no territorial jurisdiction.

In the circumstances the application is dismissed. I make no order as to costs.

Dated at Bungoma this 28th day of May 2015.

ALI-ARONI

JUDGE.