



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

HC CC. NO. 157 OF 2015

SILVESTER NJUKI NJIRU.....APPLICANT

VERSUS

JOSEPHAT WACHIRA LUKA.....RESPONDENT

RULING

INTRODUCTION

By his notice of motion dated 19th August, 2015, the applicant in person has moved the court to withdraw and transfer Civil Case No. 40 of 2015 from Embu Chief Magistrate's Court to Siakago Principal Magistrate's court for trial and disposal.

The Applicant has annexed to his notice of motion a supporting affidavit dated 19th August, 2015.

The application is unopposed. The Respondent was served with this application on 3rd September, 2015, which came for hearing on 28th September, 2015. I find from the affidavit of service that the Respondent was properly served and had adequate notice to prepare and respond to the application. It is for this reason that the hearing of this application proceeded in the absence of the Respondent.

According to the Applicant in his supporting affidavit, he has stated that when the pending suit was for mention, the trial magistrate ordered him to file an application for transfer of the case to the Principal Magistrate's Court at Siakago.

Additionally, the trial magistrate told him that the subject matter of the suit being land parcel No. Nthawa/Riandu/243, "*was under the jurisdiction of the Siakago Principal Magistrate Court.*"

The application for transfer is based on sections 18 (1) and 3A of the CPA and all enabling laws.

The applicant's claim against the Respondent is for a refund of Kshs 100,000/- in respect of a failed land purchase in which the Respondent allegedly failed to transfer to him. The Applicant has in addition sought an order of specific performance to compel the Respondent to transfer the ownership of the land to him, being an alternative claim. There is also a claim for damages for breach of contract and costs.

Both the applicant and the Respondent are residents of Siakago. According to **section 5 of the Magistrate's courts Act (Cap 10 Laws of Kenya)** as amended by Act No. 12 of 2012 the pecuniary jurisdiction of the various magistrates' courts is as follows:

a chief magistrate to a sum not exceeding seven million shillings

a senior principal magisterial a sum not exceeding five million shillings

a principal magistrate to a sum not exceeding four million shillings

a senior resident magistrate to a sum not exceeding three million shillings

a resident magistrate to a sum not exceeding two million shillings

It is to be noted that the Chief Justice is empowered to increase the pecuniary jurisdiction of the above courts depending on the state of business in those courts. It is also clear from the foregoing that both the courts of the chief magistrate at Embu and that of the principal magistrate at Siakago have subject matter jurisdiction to try this claim. `

Furthermore, according to section 3 (2) of the Magistrates' Court Act, a court of the Resident Magistrate has jurisdiction throughout Kenya. In that Act, a court of the Resident Magistrate is defined to include the court held the chief magistrate, a senior principal magistrate, a senior resident magistrate, and a resident magistrate. All grades of magistrates below the court of the resident magistrate do not have jurisdiction throughout Kenya.

It therefore follows that both the courts of the Chief Magistrate at Embu and that of the Principal Magistrate at Siakago have both the territorial and subject matter jurisdiction to try and determine this claim.

In the light of the foregoing it is not legally correct to assert that the court of the Chief Magistrate at Embu does not jurisdiction to try this claim.

However, the application for transfer is hereby allowed on the ground that it is convenient to both parties. Both parties are residents of Siakago. Siakago Principal Magistrate's Court as a trial venue is convenient to them in terms of reduced travel costs and related matters.

I therefore grant the applicant's application for transfer. There will be no order as to costs.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this.. **26th** day of **OCTOBER 2015**

In the absence of the parties.

Court clerk Njue

J.M. BWONWONGA

JUDGE

26.10.15