

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
ELC MISC. NO.232 OF 2013

MARTIN MUKOSI NGAA PLAINTIFF

GLADYS MULI PLAINTIFF

VERSUS

KITHYO KATA MATEMU..... 1ST DEFENDANT

JOHN M. MBIJIWE 2ND DEFENDANT

MEALINE KENYA..... 3RD DEFENDANT

R U L I N G

1. By a **Plaint dated 12.10.2012** the Applicants were sued in Machakos CMCC.838/2013 on the ground that on 11.10.2012 they entered into the Respondents premises in Athi River Township L.R. 33/3220 in pretence of distressing for rent accrued amounting to KShs.2,030,000/- and attached Motor Vehicle KAZ 971 L property of the 2nd Respondent and KBJ 903D property of the 1st Respondent. The Respondents seek the release of the 2 motor vehicles and damages inter alia.
2. The Applicants who are defendants in the aforesaid suit lodged the instant matter via a notice of motion dated 11.11.2013 seeking the said suit Mks.CMCC No.838/2012 to be transferred to Mavoko subordinate court. The Applicants set out their grounds on the affidavit sworn by Tata Matemtu Kithyo on 11.9.2013 and the grounds on the face of the motion.
3. The Application is anchored on the provisions of Section 14, 15, 18 (1) (b) and 3A of Civil Procedure Act Cap 21. The Respondents have opposed the same via the affidavit of Martin Mukosi Ngaa sworn on 30.9.2013.
4. The Applicant's case is that the subject matter and alleged cause of action arose in Athi River. The Respondents reside in Athi River and the Applicants reside in Nairobi. The local limit of jurisdiction is within the territory of Mavoko Magistrate's Court. The amount alleged due also is within the monetary jurisdiction of the subordinate court. The Respondents feeble ground of opposition is that the Machakos Magistrate court have also jurisdiction to try the matter and that the Applicants have not demonstrated prejudice they are likely to suffer by matter being tried in Machakos subordinate court.
5. Section 15 (c) stipulates that every suit shall be instituted in a court within a local limits of whose jurisdiction **THE CAUSE OF ACTION WHOLLY OR IN PART ARISES.**

In the instant matter, the alleged distress took place in Athi River within Mavoko area where the Magistrate court is located with jurisdiction to try the matter.

6. The Plaintiff in the suit reside in Athi River and the Defendants reside in Nairobi. It will mitigate express to the parties to proceed with matter in Mavoko Magistrate's court. The court therefore makes the following orders:
 1. Application dated 11.9.2013 is allowed in terms of prayer 1.
 2. Costs in the suit CC.838/2012. The file to be transferred to Mavoko Principal Magistrate Court and be mentioned on 16.1.2015.

Signed and Delivered at Machakos this 19th day of December, 2014.

CHARLES KARIUKI

JUDGE