



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**

**MISC. APPLICATION 136 OF 2014**

J W N.....APPLICANT

VERSUS

M K R.....RESPONDENT

**RULING**

This is an application dated 31st July, 2014 seeking for the following orders:-

- 1. That this honourable court be please to order transfer of Embu Children's Case No. 18 of 2014 to Nairobi Children's Court at Milimani Law courts.**
- 2. That the same be consolidated with children's case No. 786 of 2014 at Milimani law Court.**

The grounds supporting the application is that both the Applicant and the respondent reside in Nairobi and Machakos respectively. The subject matter in the two cases is the same and it is in order to have the two files determined together. The Applicant feels that the parties may be subjected to great expense in travelling to the two courts. The respondent is said to have obtained an order for custody of the couple's child namely S J R aged six years in the Embu Children's Case No.18 of 2014.

The respondent opposed the application arguing that he was the first to file his case Embu Children's case No. 18 of 2014 whereas the respondent filed her Nairobi case much later. He accuses the applicant herein of non-disclosure of material facts and falsehoods in this application. The respondent also accused the applicant of delaying the Embu Children's case by seeking frequent adjournments. He opposes the application arguing that if the Embu case is transferred to Nairobi, he will be subjected to unnecessary movements because of his job.

The issue for determination here is whether the applicant has satisfied the court on the transfer of the case to Nairobi Children's court. Firstly, the court will examine the relevant law.

Section 15 of the Civil Procedure Act provides that every suit shall be instituted in a court within the local limits of whose jurisdiction the defendant actually and voluntarily resides at the time of the commencement of the suit. The Applicant who is the defendant in Embu Children's case No. 18 of 2014 depones that she resides in Nairobi while the respondent/plaintiff resides in Machakos. The respondent did not refute this fact in his replying affidavit. The right place to file the suit would have been in Nairobi where the defendant resides. The respondent did not explain why he filed the suit in Embu where non of the parties reside. He resides in Machakos which is a bout 200 kilometers from Embu. So what was he up to when he filed the case in Embu. The reason for preferring Embu Court is only known to the respondent hoping hope he was not on a court shopping mission. There is no doubt that the suit was filed in the wrong court in the first place contrary to Section 15 of the Civil Procedure Act.

Section 18 of the Civil Procedure Act confers powers to withdraw and transfer any suit to another court on application by any of the parties or on its own motion.

Multiplication of suits is a very dangerous thing in the administration of justice. It may lead to various risks. Two different judges or magistrates may issue contradicting orders which are likely to cause confusion and expose the presiding officers to embarrassment. The suit may also subject the parties to unnecessary expense. I agree with the applicant that consolidating the two suits would serve the interests of justice and save the parties from unwarranted expense.

For the foregoing reason, I find the application merited and allow it in terms of prayer 2 of the application. Consolidation of the suits may be done by the Nairobi Children's Court on receipt of the Embu children's case court file.

Each party will meet its own costs of this application.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 9TH DAY OF DECEMBER, 2014.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Both parties present in person**

**F. MUCHEMI**

**JUDGE**