REPUBLIC OF KENYA

High Court at Kakamega

Miscellaneous Application 20 of 2012

JOSEPH A. MADO.....APPLICANTS

V E R S U S

THE CHAIRMAN, SECRETARY AND BOARD OF TRUSTEES

KISII NURSING HOME

DANIEL ORENGE

DANIEL OGAMBA NYANDAGO.....RESPONDENTS/DEFENDANTS

R U L I N G

The Notice of Motion dated 2nd April 2012 seeks to transfer Kakamega CMCC No. 121 of 2008 to the Maseno Law Courts. Parties agreed to file written submissions but none filed submissions. The applicant contends that the suit before the subordinate court emanates from a road traffic accident that occurred along the Oyugis – Kisumu road at Sikiri center. Some of the defendants come from Maseno, Kisumu and Kisii. He would like to have the case transferred to the Maseno Court as it is the best court to determine the case.

In opposition to the application the respondents contend that the suit before the Kakamega Chief Magistrate was filed before a court that lacked jurisdiction. That being the case, then the suit cannot be transferred to another court. it should be withdrawn and then a fresh suit filed.

The Civil Procedure Act allows the High Court to transfer suits form one subordinate court to another. Similarly, **Article 165(7)** allows the High Court to call for any proceedings before any subordinate court and make orders or give direction it considers appropriate to ensure the fair administration of justice. The contention by the respondents that the suit before the Kakamega Court has to be withdraw first is misplaced. The place of suing is meant for convenience of the litigants and if the High Court is of the view that the case ought to be heard at a different forum or court, it has powers to do so.

I am satisfied that the application dated 8th July 2011 is merited. No prejudice will befall the respondents. The application is granted as prayed. Costs shall be in the cause.

Delivered, dated and signed at Kakamega this 7th day of February, .2013

SAID J. CHITEMBWE
J U D G E