



REPUBLIC OF KENYA

High Court at Machakos

Miscellaneous Civil Application 64 of 2010

RUTH MUOKI PLAINTIFF/APPLICANT

VERSUS

DANIEL KILONZO DEFENDANT/RESPONDENT

R U L I N G

The application dated 17/2/2010 is premised on **Section 18** and **Section 3A** of the **Civil Procedure Act** and all other enabling provisions of the law.

The application seeks the following orders:-

- 1. “THAT this Honourable Court be pleased to direct that Civil Suit NO. 733 of 2007, Machakos be transferred to Magistrates Court at Tawa for hearing and disposal.**
- 2. THAT the costs of this application be provided for.”**

The application is supported by the affidavit sworn by **Alphonse M. Mbindyo** the applicant’s counsel on 17/2/2010.

According to the said affidavit evidence, **Machakos CMCC 733 of 2007** is for a claim of kshs.41,730/= and the magistrate's court at **Tawa Law Courts** has the competent jurisdiction to try the matter. It is averred that both the plaintiff and the Defendant reside in **Tawa** and it would therefore be expensive, oppressive and inconvenient for both parties to travel from **Tawa** to **Machakos** for the hearing of the case.

The court record does not reflect whether a replying affidavit or grounds of opposition were filed.

The firm of **A.M. Mbindyo Advocates** appeared for the applicants while **Wambua Kilonzo Advocates** appeared for the Respondent. The application was canvassed by way of written submissions which I have duly considered.

It was argued for the Respondent that a suit must be filed in a court of competent jurisdiction for the court to exercise the power to transfer the same. For the applicant it was argued that the Resident Magistrate's Court has jurisdiction throughout **Kenya** and both the lower court and the **Machakos CM'S Court** have the jurisdiction to hear and determine this case. There is a legion of persuasive authorities in support of the rival submissions.

Section 15 of the **Civil Procedure Act** requires that every suit be instituted in a court within the local limits of whose jurisdiction the defendant at the commencement of the suit voluntarily resides or carries on business or personally works for gain or where the cause of action arose.

Under **section 18 (1)** of the **Civil Procedure Act** the High Court has the power to order at any stage, the withdrawal of any suit or proceedings in any court subordinate to it and transfer the same for trial or disposal by any other subordinate court competent to try or dispose of the same.

In the case at hand it is not in dispute that both parties herein reside in **Tawa**. It is also not in dispute that the cause of action arose in **Tawa**. No prejudice will therefore be occasioned to any of the parties if the case is transferred to **Tawa** for hearing and disposal. I therefore allow the application with costs to the Defendant.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **25th** day of **April** 2013.

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B. THURANIRA JADEN

JUDGE