



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**MISC. CIVIL APPLICATION NO. 6 OF 2013**

**1. TAMARIND MANAGEMENT LTD**

**2. JOYCE NDUNGWA DENNIS.....APPLICANTS**

**VERSUS**

**MARY NYAMBURA NDUNGU.....RESPONDENT**

**RULING**

1. The Applicants, the defendants in **Kiambu CMCC No. 199 of 2011**, seek withdrawal of the suit from that court and transfer of the same to **Kikuyu Law Court** for hearing and determination. The application is stated to be brought under **sections 1A, 1B, 3A, 15 & 17** of the **Civil Procedure Act, Cap.21** (the Act) and **Order 47, Rule 6(2)** and **Order 51, Rule 1** of the **Civil Procedure Rules, 2010** (the Rules).

2. The main ground for the application is that the cause of action arose within the local limits of the jurisdiction of Kikuyu Law Court, and further that it would be convenient for the Respondent and the 2nd Applicant who reside in Kikuyu. It is further stated that the 1<sup>st</sup> Applicant's place of business is in Nairobi. In other words, the Applicants claim that the Kiambu Chief Magistrate is not clothed with the necessary territorial jurisdiction to hear and determine the suit.

3. The Respondent, who is the plaintiff in the said suit, opposes the application upon the main ground that it is the same distance from Nairobi to Kikuyu as from Nairobi to Kiambu. She also states that she is apprehensive she might not get justice at Kikuyu Law Court because of the manner in which that court handled the issue of inquest involving the same parties.

4. I have read the affidavit sworn in support of the application and that sworn in reply. They are both essentially arguments for the respective positions of the parties as already stated.

5. It is not clear where the boundary of the territorial jurisdictions between Kiambu Chief Magistrate's Court and Kikuyu Law Court is in relation to where the accident giving rise to the suit occurred. It is even not clear if there is such boundary! Both courts are within Kiambu County and probably less than 20 kilometres separate the two. I also accept that both courts are roughly equidistant from Nairobi. It is therefore just academic as to which of the two courts the plaintiff should have instituted her suit.

6. There is really no point in the present application and it is a waste of the court's time. Transferring the suit from Kiambu to Kikuyu will not add value at all and will not have any impact upon the parties in terms of cost or convenience of travel. It would only occasion delay to the final determination of the case.

7. The application is entirely without merit and I must refuse it. In doing so I must also state that I am not here dealing with an application to disqualify the Kikuyu Law Court for whatever reason from hearing and determining the case. The application is dismissed with costs to the Respondent. It is so

ordered.

**DATED AND SIGNED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JUNE 2013**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF JUNE 2013**