



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISC APPLICATION NO 612 OF 2012

JOHN M. OHAGA.....APPLICANT

VERSUS

ATHI RIVER MARBLE & GRANITE LTD.....RESPONDENT

RULING

1. This application (by **notice of motion dated 31st October 2012**) seeks the main order that **Mavoko SRMCC No 358** be withdrawn from that court and be transferred to the Resident Magistrate's Court, Nairobi for disposal. This is an application under **section 18(1) (b) (ii)** of the **Civil Procedure Act, Cap 21** (the Act).

2. The grounds for the application stated on the face thereof include –

(i) That the Applicant (who is the defendant in the suit sought to be transferred) is “actually resident and carries on business in Nairobi as a managing partner” of a law firm.

(ii) That the services alleged to have been rendered by the Respondent (plaintiff in the suit) and giving rise to the cause of action were so rendered in Nairobi.

(ii) That if the suit is tried at Mavoko the Applicant will incur unnecessary expenses.

3. The Respondent has opposed the application by replying affidavit filed on 8th November 2012. The grounds of opposition raised include –

i. That the Respondent operates at Athi River where the Applicant or his agent or servant “came and identified suitable granite for his purposes”.

ii. That Mavoko Court was established to bring services closer to the consumers.

iii. That, in effect, the application has no merit.

4. The Respondent's suit in the lower court does not involve immoveable property (**sections 12 and 13 of the Act**); nor is it for compensation for wrong to the person or to moveable property (**section 14**). The suit is thus in the category of “other suits” which fall under **section 15** of the Act. Section 15 of the Act

provides –

“15. Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

- a. the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or**
- b.; or**
- c. the cause of action, wholly or in part, arises.”**

5. The place of filing and trial of the suit before the lower court ought to have been, and will be, determined by where the defendant (Applicant) actually and voluntarily resides or carries on business, or personally works for gain at the time of commencement of the suit; or by where the cause of action, wholly or in part, arose.

6. I am satisfied that at the time of commencement of the suit the defendant (Applicant) actually and voluntarily resided and carried on business in Nairobi.

7. Regarding where the cause of action, wholly or in part, arose, I have read the copy of the plaint annexed to the supporting affidavit. Paragraph 4 thereof states –

“4. On or about the 13th October 2006, at the request of the Defendant, his servant or agent, the Plaintiff supplied and fixed marble granite at the Defendant’s home in Runda Estate at a cost of KShs 116,620/00”.

8. We all know that Runda Estate is in Nairobi. It would therefore appear, from the Respondent’s own pleading, that the cause of action arose in Nairobi.

9. In the circumstances I have no hesitation in allowing the application. Mavoko SRMCC No. 358 of 2012 is hereby withdrawn from that court and transferred to the Resident Magistrate’s Court, Milimani for disposal. It is so ordered.

10. Costs of the application shall be in the cause.

DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF AUGUST 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 15TH DAY OF AUGUST 2013