



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION SUIT NO. 397 OF 2012

MARY WANGECI MABIA (Suing on her own behalf

And as administratrix of the Estate of)

ALLEN LUGONDI MUREYIPLAINTIFF

VERSUS

- 1. SILVESTER KIMANTHI**
- 2. BROOKSIDE DAIRIES LIMITED**
- 3. MAWEU ANNAH**
- 4. KENYA CCOMMERCIAL BANKDEFENDANTS**

RULING

By way of a Notice of Motion application dated the 7th day of December, 2012 the applicant sought orders for the transfer of Civil Suit No. 2754 of 2011 **MARY WANGECI MABIA – VS- SILVESTER KIMANTHI & OTHERS** from Chief Magistrates Court Mombasa to Kwale Court.

The grounds are that the cause of action arose at TIWI along Ukunda – Likoni road within the jurisdiction of the Principal Magistrate's Court at Kwale.

That at the time of filing the suit the Kwale Court was a Senior Resident Magistrate one. That it is now a Principal Magistrate Court with enhanced monetary jurisdiction. The application is supported by the affidavit of Mary Wangechi Mabia.

The application is opposed. The Court has been cited the case of **CHRISTINE KAHINDI KARUA & ANO. -VS- MAHA INTERNATIONAL LTD & ANO.** where Omondi, Judge rendered herself thus,

“The matter is adequately catered for by the provisions of section 15 of the Civil Procedure Act and there is no reason to warrant Transferring the matter to Garsen”.

Section 15 of the Act provides,

“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) any of the Defendants (whose and voluntarily resides or carries on business, or personally works for gain....

(c) The cause of action wholly or in part arises”.

It is not in dispute that the Defendants work and reside in Mombasa where the suit was filed.

I am of the considered view that the applicant has not demonstrated good and valid grounds for the transfer of the suit to Kwale. The Mombasa Court has jurisdiction to hear and determine the matter. It has already been filed and probably waiting the fixing of hearing dates. There is no indication that the matter will not be expeditiously heard and determined in Mombasa.

Indeed, the transfer would be prejudicial to the Defendants owing to delay.

The application has no merit and is dismissed with costs.

Ruling delivered dated and signed in open Court this **25th** day of **September, 2013**.

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M. MUYA

JUDGE

25TH SEPTEMBER, 2013

In the presence of:-

Learned Counsel for the Plaintiff Shimaka

Learned Counsel for the 1st Defendant Ms Kahiti

Court clerk Musundi