

No. 119/2013

IN THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISCELLANEOUS NO. 3 OF 2013

NELSON MATIMU KIBUI..... APPLICANT

VERSUS

GULF INTERNATIONAL CO.LTD.....1ST RESPONDENT

BUSCAR (K) LTD.....2ND RESPONDEBT

RULING

1. The application dated 4th September, 2012 is brought pursuant to the provisions of Section 15 and 18(1) of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules.
2. It seeks orders transferring Civil Suit No. 571 of 2009 from the Chief Magistrate's Court, Machakos to the Principal Magistrate's Court, Makindu for hearing and determination.
3. The application is premised on grounds that the cause of action arose at Emali area along Nairobi – Mombasa road which is within the jurisdiction of the Principal Magistrate's Court, Makindu; at the time of instituting the suit the applicant reasonably believed that the cause of action therein arose within the jurisdiction of the Chief Magistrate's Court, Machakos.
4. The application is unopposed.
5. A suit may be instituted where the defendant resides or where the cause of action arose (*see Section 15 of the Civil Procedure Act*).
6. It has been pleaded that the cause of action arose at Emali area. I have perused annexure "MW3" to the affidavit in support of the application which is a copy of the defence filed in the matter. It is not denied that the cause of action arose at Emali area which is within the jurisdiction of Makindu Principal Magistrate's Court. Justice can only be seen to be done if it is accessible to parties litigating.
7. The applicant having moved this court to exercise powers bestowed on it by Section 18 of the Civil Procedure Act, I do allow the application as prayed.
8. Costs shall be in the cause.
9. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 29TH day of OCTOBER, 2013.

L.N. MUTENDE

JUDGE