

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISC. CIVIL APPLICATION NO. 73 OF 2013

PAUL BARASA WAMOT

T/A PAWABA AUCTIONEERS APPLICANT

V E R S U S

AMINA LUTTA HANJIRA 1ST RESPONDENT

EQUITY BANK 2ND RESPONDENT

R U L I N G

The application dated 13.8.2013 the applicant is seeking to have file number Kakamega CMCC 228 of 2013 transferred to the Mumias Senior Principal Magistrate's Court for hearing and determination. Mr. Odongo for the applicant submitted that the cause of action arose in Mumias, the defendants are based in Mumias and the property that was attached is also being held at the Mumias police station. **Section 15** of the Civil Procedure Act requires that suits be filed within the local jurisdiction and the Mumias court has jurisdiction to hear the matter. It will be expensive to ferry witnesses all the way from Mumias.

Mr. Kundu, counsel for the plaintiff/respondent opposed the application and relied on the replying affidavit of the applicant sworn on the 21.8.2013. Counsel maintains that when the suit was filed the applicant did not object to the jurisdiction. **Section 32** of the Magistrate's Court Act, (Chapter 10) donates powers to the Chief Magistrate in Kakamega to hear the matter. Counsel contends that the plaintiff did indicate in her replying affidavit that a manager of the 2nd defendant informed her that the court officials at Mumias are known to him and the plaintiff cannot win at Mumias. That information made the respondent to file the matter in Kakamega.

The law requires that cases be filed in a court within the local jurisdiction. It is true that the Mumias court has jurisdiction to determine the dispute. However, the contentions by the respondent cannot be swept under the carpet. Justice should not only be done but should be seen to be done. Whereas the defendants are comfortable with the matter being heard at Mumias, the respondent is apprehensive that if it is heard at Mumias she may not get justice. The essence of settling disputes encompasses the element of faith on the part of the court officials. Each party must be of the view that they would dispense justice and not favour any of the parties. Where a party is apprehensive, the court has to evaluate that contention and see how to deal with it. The respondent herein contends that she took a loan from the 2nd defendant and the loan was fully paid. There was no demand notice issued to her and her items were attached and carted away by the 1st defendant. On inquiry from the 2nd defendant, she was informed that the attachment was for the recovery of the auctioneer's costs. There appears to have been no previous court case. I have read the replying affidavit by the 1st respondent and I am satisfied that her apprehension is justified. The only prejudice the defendants would suffer is the issue of costs which can be awarded should the plaintiff's case be dismissed. In the end, I do find that justice would be served if the matter is heard in Kakamega. The application herein is hereby dismissed with no orders as to costs.

Delivered, dated and signed at Kakamega this 23rd day of October 2013

SAID J. CHITEMBWE

JUDGE