



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HC MISC APPLICATION NO. 12 OF 2012 MOSES ONYANGO OKECH (suing as legal representative Of the estate of

Boniface Omondi Onyango)..... APPLICANT/PLAINTIFF

VERSUS

ERNIE CAMPBELL CO. LTD.....RESPONDENT/DEFENDANT

RULING

The applicant filed a suit in Chief Magistrate Court at Milimani on 16/12/2008. The suit is in negligence and the plaintiff is seeking damages.

On 17/1/2012 the plaintiff filed a chamber summons under sections 18 and 3A Civil Procedure Act seeking order to transfer the said suit No.CMCC 7928 of 2008 from the Chief Magistrate to the High Court on the grounds that it was filed inadvertently in that court and that the sum of damages has exceeded the pecuniary jurisdiction of Chief Magistrate Court and therefore the interest of justice demands that the suit be withdrawn to be tried by the High Court. The supporting affidavit is sworn by applicant Moses Onyango Okech. The applicant shows that he is suing in capacity of the legal representative of deceased who fell in a swimming pool and met his death due to the negligence of the defendant.

He swears that he has been advised by his advocate to withdraw this suit from the lower court to High Court where the jurisdiction is higher than in the lower court.

The advocate has quantified the possible damages award and has arrived at Kshs.6,200,000/= quoting 5 authorities. In support of such assessments.

Regarding this application the applicant has cited **HCC Misc. Application No.94 of 2005 Beatrice Awino Odendo –vs- Konoike Veidekke Murray and Roberts J V Sondu Miriu Hydro Power Project** in which it was held in a case where a court had jurisdiction to try the suit and all a party seeks is to receive more compensation that such a court can award does not mean that the suit is filed in a court without jurisdiction. The issues for consideration for transfer of suits are the questions of expenses of parties and witness and interest of justice. The questions of undue hardships and balance of convenience do not arise since both courts are situated in the same premises. The court made order of transfer.

There was opposition in that the lower court case was instituted in a court without jurisdiction and the applicant has already admitted filing his claim in lower court which does not have the pecuniary jurisdiction to award damages. The respondent has cited five authorities. Considering the first authority

Judicial Hints by Kuloba says that the transfer will only be ordered where the suit was firstly filed in a court with jurisdiction. The second authority is the **Kagenyi –vs- Musiramo & Another** where it was held that an order for transfer of a suit to another court cannot be made unless the suit has been in first instance brought to a court which has jurisdiction.

The third authority **Boniface W. Mbuyu –vs- Mary Nyeri – Another 639 of 2005** the issue for transfer was that the value subject matter is above pecuniary jurisdiction of Chief Magistrate Court. The court Ojwang J followed the decision in **Kagenyi case** (above noted) and declined to grant order for transfer.

The 4th authority is **Misc. Application No. 3 of 2006 at Nakuru Private Development Co. Ltd –vs- Rebecca Ngonyo & Another**. The basis of the application was the value of subject matter which was valued at Kshs.5000.000 higher than the jurisdiction of Chief Magistrate of Nakuru. The court rejected the prayer for transfer.

In this case I find the just way is to follow the Ruling of Tanui J now (retired) in the case of HCCC Misc. Appl. 94 of 2005 aforementioned where the only reason for transfer order was sought was that Chief Magistrate did not have pecuniary jurisdiction otherwise he had jurisdiction to try the case but the applicant wanted to be paid more sum than the Chief Magistrate could award. The Judge relied on the case of **Kagenyi –vs- Musiramo** where the Magistrate jurisdiction was limited to 1000/= in Civil matter. The Hon. Judge state that the jurisdiction of court of Chief Magistrate in Kisumu Court was not limited in the Way.

“The Chief Magistrates court has jurisdiction to try the present suit. All the plaintiff proposes is to transfer the case to this court so that they would be paid more compensation for general damages that they would get at the Chief Magistrate court.”

The judge found that the objection that the lower court had no jurisdiction was not valid and he granted a transfer order.

In my view the Chief Magistrate Court in Kenya has jurisdiction to try negligence cases and the limit is the quantum of damages that could be awarded. This is administrative power not on the issue of whether or not they could try the cases. They had jurisdiction to hear and determine the liability and the amount of damages.

The lower court and the high court are in the same premises, here therefore consideration of hardship and expenses of parties witnesses and balance of convenience are not involved. I therefore find that when all things are considered the application is reasonable and I grant orders sought. I allow the application and grant orders as sought.

Costs shall be in the cause.

Dated and delivered this 23rd February, 2012.

J.N. KHAMINWA
JUDGE