



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MACHAKOS

Civil Suit 228 of 2011

DANIEL KIMANI MOSEKA.....PLAINTIFF

VERSUS

JAPHETH ARTHUR MWANGI KIURIRE.....DEFENDANT

RULING

1. By a Notice of Motion dated **11/10/2011** (“*Application*”), the Defendant in this suit, **Japheth Arthur Mwangi Kiurire** (“*Defendant*”) seeks an order that this Court transfers the present suit being **Machakos High Court Civil Case No. 228 of 2011** to the **Nairobi High Court**. The Application is expressed to be brought under **sections 3A and 12** of the **Civil Procedure Act** and **Order 51, Rule 1** of the **Civil Procedure Rules**. The Application is supported by the affidavit of the Defendant.
2. The basic argument the Defendant makes is that the suit has been filed in **Machakos** in violation of **section 12** of the **Civil Procedure Act** which, he argues, provides that a suit involving real property shall be brought in the court where the property is situated in Kenya. He argues that the suit property is located in **Karen** within **Nairobi** and that the proper identification of the suit property is **LR No. 1161/4 (original 1161/2), Karen, Nairobi**.
3. The Defendant avers in his Supporting Affidavit that the description of the suit property by the Plaintiff, **Daniel Kimani Moseka** (“*Plaintiff*”) as **Ngong/Ngong/28986** is mischievous and calculated to conceal the fact that the suit property is situate in Nairobi not Kajiado county as the Plaintiff would like the Court to believe.
4. Additionally, the Defendant argues that it would cause him great inconvenience if the suit is tried in Machakos since that will involve tremendous travel for him. He also claims that the Plaintiff has elected to file this case in Machakos because he has a “*sinister*” motive, namely, to mislead the Court.
5. The Plaintiff has opposed the Application and filed Grounds of Opposition. First, the Plaintiff refutes that the suit property is situate in Nairobi. To aid in that aspect, the Plaintiff points that he holds the title to the suit property and the same clearly describes it as **Ngong/Ngong/28986**. He also draws the Court attention to the fact that in another High Court matter involving the same property, *Justice Ojwang* had pointed out that it is unclear what the correct description of the land is and recommended that cadastral survey be done to establish the true position.
6. The Plaintiff also argues that he did, in fact, try to institute the suit in Nairobi but because of the description of the suit property in his suit papers, he would not be permitted to do so. This is because the High Court has an administrative policy that suits coming out of an area within a geographical area

wherein the High Court is located should be filed there. Hence, the registry staff in Nairobi advised the Plaintiff to file the suit in **Machakos**. Finally, the Plaintiff doubts that the High Court has jurisdiction to transfer a suit from one High Court to another. He points out that **sections 17 and 18** of the **Civil Procedure Act** have nothing to do with the High Court: they involve transfer of suits instituted in a subordinate court by the High Court.

7. I do not propose to exhaustively answer the question whether the High Court has authority to “transfer” a case from one High Court to another Station. The Plaintiff is, of course, correct that **sections 17 and 18** of the **Civil Procedure Act** do not cover that situation. Neither party addressed me comprehensively on this issue. First, I note that **section 12** of the **Civil Procedure Act** which the Defendant has relied on this Application is inapplicable here. As *Justice Onyango-Otieno* held in *Guardian Bank Ltd v Norlake Investments Ltd* (Nairobi Milimani High Court Misc. Appeal No. 40 of 2000), **section 12** can only be invoked in cases filed in the subordinate courts as the High Court has countrywide geographical jurisdiction. Hence, local limits of the High Court do not apply since its jurisdiction extends all over Kenya.

8. Suffice it to say that I agree with the holding and reasoning of *Justice Waweru* in *Kenya Tea Development Agency v Thomas Mboya Oguttu T/A Ms Oguttu Mboya & Co. Advocates & Another* (Nairobi High Court Case No. 6 of 2004) (unreported). In that case, *Justice Waweru* said that there is only one High Court in Kenya which sits at various locations as the Chief Justice might appoint. That one High Court (established under section _ of the Constitution) has a Central Office in Nairobi and various District registries. Machakos is one such registry. It is the same High Court that sits in Nairobi and all the various registries. It is not different High Courts. As such, a High Court judge may, in good faith, direct that a case be heard at a different registry if it would be more convenient for the parties or the court or for some other just cause. This is not a “transfer” from one High Court to another High Court but a transfer from one registry to another. I am therefore of the opinion that in an appropriate case, a High Court judge can invoke its inherent jurisdiction or the powers donated in **Order 47, Rule 6** to transfer a case from one registry to another even if those registries are manned by different judges.

9. The question, then, turns to whether this is an appropriate case to effect the transfer requested here? I think not. I say so for the reason that the major reason relied on by the Defendant to request the transfer is invalid. The Defendant requests the transfer based on two grounds. First, he makes the formalistic argument that the Suit Property is situated in Nairobi and therefore the suit should have been filed in Nairobi. However, as the Plaintiffs correctly point out, the very description of the Suit Property and where it is located is an issue in this suit. It is, therefore, premature to come to the conclusion that the Suit Property is in Nairobi. Indeed, following the ruling by *Justice Ojwang* referenced to above, a Senior Assistant Director(Cadastral) in the Ministry of Lands conducted investigations and concluded thus:

The Commissioner of Lands should investigate and shed light on how parcel Ngong/Ngong/304 physically falls in Nairobi while its ownership records are in Kajiado District for this would solve the issue of possible double allocation and thus conclude this matter of land claim.

10. In any event, the Plaintiff has argued that the administrative rules made by the Central Office of the High Court necessitated the filing of this suit in Machakos. Since, as I have pointed out above, there is only one High Court in Kenya, and the administrative policies made to ensure the orderly administration of justice required the Plaintiff to file the suit in Machakos, it follows that it would be absurd to transfer the case back to Nairobi.

11. Finally, the Defendant claims that trying the case here would mean a lot of inconvenience for him. Apart from the distance of about seventy Kilometres between Nairobi and Machakos, the Defendant has not demonstrated what other hardships Machakos holds for him. The Court will take judicial notice of the fact that Machakos is a mere one and one half hour’s drive from Nairobi. Unless there are specific circumstances which have not been disclosed, the argument about inconvenience is, in the Court’s view, exaggerated.

12. In the end, therefore, I will dismiss the Application dated **11/10/2011** with costs.

DATED, SIGNED and DELIVERED at MACHAKOS this day 15TH day of FEBRUARY 2012.

J.M. NGUGI
JUDGE