



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

Miscellaneous Civil Application 5 of 2012

JUSTUS THAIRU 1ST APPLICANT

RAECHEL WANJIRU MBUTHI 2ND APPLICANT

VERSUS

TRUPHENA ANINDO LUBANGA RESPONDENT

RULING

The application dated 10th January 2012 is made by way of a Notice of Motion pursuant to provisions of **Section 14** and **18(1)(b) (II) Civil Procedure Act Section 10** of the **Judicature Act, Rule 3(II)** of the High Court (Practice & Procedure) **Rules, Order 51 Rule 1 (Civil Procedure Rules 2010)**, seeking that the proceedings in **Eldoret CMCC No.547 of 2011** be stayed pending final determination of this application, and court orders for withdrawal of the case pending before Eldoret court and transfer the same to the PM's court at Naivasha for trial and disposal.

The grounds upon which this application is based are:

1. The suit in Eldoret was scheduled for hearing on 16th January 2012.
2. The applicants are the defendants in the Eldoret case.
3. The cause of action arose along Nairobi-Naivasha Highway near Soko Mjinga in Kinangop.
4. Both applicants reside and work in Kikuyu, Kiambu County.
5. The Applicants are desirous that the suit in Eldoret be withdrawn and transferred to the PM's court

Naivasha where the cause of action arose.

6. The PM's court Naivasha has both territorial and pecuniary jurisdiction to hear and determine the plaintiff's claim in Eldoret CMCC No.547 of 2011.

The application is supported by the affidavit sworn by **JOHN GATENJWA KAGUCIA** who is the advocate for the applicants. He deposes that the pleadings served clearly indicate that:

- (a) The cause of action arose along Nairobi – Naivasha Highway near Soko Mjinga area in Kinangop.
- (b) Both applicants to the suit reside and conduct their business in Kikuyu.

He believes that the disposal of the suit will be expedited in Naivasha and it will also minimize expenses. Further the Principal Magistrate's court has both territorial and pecuniary jurisdiction to hear and determine the suit, and the applicants will be prejudiced if the orders are not granted.

The application was served on the Respondent's counsel who did not file any documents in response to the same. The **Civil Procedure Act Section 11 – 18** addresses the issue regarding institution of suits where the subject matter is situated or where the cause of action arose.

Section 14 provides that:

“Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the jurisdiction of one court, and the defendant resides or carries on business or personally works for gain, within the local limits of the jurisdiction of another, the suit may be instituted at the option of the plaintiff in either of those courts.”

This means that in this case where the cause of action arose along Nairobi – Naivasha Highway at Kinangop, the plaintiff should have filed suit either in Naivasha court (which has jurisdiction over Kinangop) or in Kiambu where the defendants reside but not in Eldoret.

The option that the plaintiff/respondent exercised by filing the suit in Eldoret which she gives as her address is not provided for under the Civil Procedure Rules. The Rules seem to bend over backwards in favour of Defendants when it comes to filing of suits. Institution of suits where the subject matter is situated or where the cause of action arose as contemplated by Section 14.

Section 15 provides that:

“Subject to the limitation 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.”

Section 18 of the Civil Procedure Act gives the High Court power to withdraw and transfer a case instituted in a subordinate court and order for trial or disposal to any court subordinate to it and competent to try and dispose of the same.

The scenario obtaining here fits in with the situation contemplated by section 14 and 15 of the Civil Procedure Act. I note that applicants could have easily filed this application in Eldoret High Court, but Section 18 does not appear to restrict parties as to which High Court to file such an application – perhaps recognising that:

- (1) The High Court has national jurisdiction.

(2) The inconvenience and likely abuse of process by requiring defendants to do exactly what they are fighting against, i.e., the inconvenience of having to travel to a court far removed from their ordinary residences and from where the cause of action arose.

My finding is that the application is merited and I allow it. This ruling applies to **HCC Misc. Application No.4 of 2012**. The costs of this application shall be borne by the Respondent.

Delivered and dated this 18th day of May, 2012 at Nakuru.

**H.A. OMONDI
JUDGE**