



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

MISCELLANEOUS CIVIL APPLICATION NO. 357 OF 2010

JOHN MWANGI KARANJA..... APPLICANT

V E R S U S

ALFRED NDIANGUI..... RESPONDENT

R U L I N G

This application (**notice of motion dated 21st July, 2010**) seeks an order under **section 18** of the **Civil Procedure Act, Cap 21** (the Act) to withdraw **Milimani CMCC No. 1992 of 2005** from that court and to transfer the same to the Chief Magistrate's Court at Thika for hearing and disposal. The Applicant is the plaintiff in the suit while the Respondent is the defendant. The plaint seeks special and general damages on account of personal injuries received in a road traffic accident.

The main ground for seeking transfer of the suit is that the accident giving rise to the suit occurred along Thika-Murang'a road within the local limits of the jurisdiction of the Chief Magistrate at Thika, and that the suit was filed before the Chief Magistrate at Milimani upon the mistaken belief that the said court had the necessary geographical jurisdiction to hear and determine the same. There is a supporting affidavit sworn by the Applicant's advocate.

The application is opposed by the Respondent as set in the replying affidavit filed on 3rd September, 2010. The main point taken is that the suit sought to be transferred having been filed in a court without jurisdiction to hear and determine it, this court has no jurisdiction to grant the order of transfer sought.

Following a preliminary objection raised by the defendant, the lower court had ruled that the accident giving rise to the suit having occurred along the Thika-Murang'a road outside the geographical jurisdiction of the court, it had no jurisdiction to hear and determine the suit. The lower court then directed that the plaintiff do file an application before the High Court for an order for transfer of the suit; hence the present application.

I have considered the submissions of the learned counsels appearing, including the authorities cited.

It has been settled law for many years now that this court has no jurisdiction under section 18 of the Act to transfer a case from one subordinate court to another if the original court had no jurisdiction in the first place to hear and determine the suit. This jurisprudence was founded upon the well-known Ugandan Case of **KAGENYI –VS- MUSIRAMO & ANOTHER [1968] E.A. 43** where it was held that whereas section 18 of the Ugandan Civil Procedure Act (which is identical to section 18 of our own Civil

Procedure Act) gives the High Court a general power of transfer of all suits, which power may be exercised at any stage of the proceedings, even *suo motu*, by the court, an order for transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it.

This case has been cited with approval by many judges of this court, including myself. See for instance **LINDA ALAL OCHIENG' & ANOTHER –VS- MOSES MAINA & ANOTHER, Milimani H.C. Misc. Application No. 1088 of 2005 (unreported).**

The Court of Appeal also appears to have approved the principle of law involved. See the case of **KENYA SEED CO. LTD. -VS- JOSEPH BOSIRE, Court of Appeal, Nairobi Civil Appeal No. 72 of 2002 (unreported).**

With the enactment of **sections 1A and 1B** of the Civil Procedure Act, the time has perhaps now come for this matter of transfer of suits to be looked at afresh. These sections provide as follows:-

“1A (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.

(2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).

(3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the court.

1B. (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-

- (a) the just determination of the proceedings;**
- (b) the efficient disposal of the business of the Court;**
- (c) the efficient use of the available judicial and administrative resources;**
- (d) the timely disposal of the proceedings, and all other proceedings in the Court at a cost affordable by the respective parties; and**
- (e) the use of suitable technology.”**

It appears to me that transfer of suits from one court to another is essentially a procedural issue that has been elevated to the status of jurisdiction.

If a suit finds itself in the wrong court, surely it is in the interests of justice and in the interests of all concerned that the suit be forwarded to the appropriate court with jurisdiction so that the issues in dispute can be properly and finally adjudicated. What prejudice would any party suffer in that event? After all, the overriding objective of the Civil Procedure Act and Rules is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act (section 1A (1)).

The court itself is enjoined by subsection (2) of that section to seek to give effect to the said overriding objective in exercise of its powers under the Act or the interpretation of any of its provisions.

It must also be remembered that notwithstanding the various local geographical limitations in jurisdiction imposed by sections 11, 12, 13, 14, and 15 of the Civil Procedure Act, the **Resident Magistrate’s Court otherwise has jurisdiction throughout Kenya**. See **section 3(2)** of the **Magistrates’ Courts Act, Cap. 10. Subsection (1)** of that section provides that a Resident Magistrate’s

Court shall be duly constituted when held by a chief magistrate, a principal magistrate, a senior resident magistrate or a resident magistrate.

That being the case, it is really a matter of procedure, not jurisdiction, to transfer a case from one Resident Magistrate's Court to another in order to satisfy local geographical limitations, as that court otherwise has jurisdiction throughout Kenya.

To my mind therefore, the principle of law regarding transfer of cases under section 18 of the Civil Procedure Act originating in the Ugandan case of **KAGENYI -VS- MUSIRAMO** (*supra*) is no longer good law, particularly in light of sections 1A and 1B of the Civil Procedure Act, and should no longer be persuasive authority to this court. On my part I refuse to be persuaded by it.

The present application seeks to transfer a suit from one Resident Magistrate's Court to another. The Resident Magistrate's Court otherwise has jurisdiction throughout Kenya notwithstanding local geographical limitations set out in the Civil Procedure Act. It should be a simple matter of procedure to transfer the suit to the appropriate Resident Magistrate's Court, appropriate in terms of local geographical limitations.

I will in the circumstances allow the application by notice of motion dated 21st July, 2010. **Milimani CMCC No. 1992 of 2005 is hereby withdrawn from that court and transferred to the Chief Magistrate's Court, Thika for hearing and disposal.** Costs of this application shall be in the main suit. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF MAY, 2010

H.P.G. WAWERU
JUDGE

DELIVERED THIS DAY OF MAY 2011