



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HIGH COURT CIVIL CASE NO. 70 OF 2007**

STEPHEN MIRITI MUGUNA ..... PLAINTIFF

VERSUS

ROYAL MEDIAL SERVICES LTD .....1<sup>ST</sup> DEFENDANT  
JAMLICK MWONGERA alias MWANA –O-NTII .....2<sup>ND</sup> DEFENDANT  
NICHOLAS MUGAMBI MBURUGU .....3<sup>RD</sup> DEFENDANT

**RULING**

This is an application dated 20<sup>th</sup> June, 2011 under Order 18(1), (a), 3 and 3A of Civil Procedure Act seeking the following orders:-

1. ***That the Honourable court be pleased to transfer this suit pending before it to the Chief Magistrate's Court at Meru for hearing and determination.***
2. ***That the Honourable court be pleased to grant further orders as may be expedite to meet the ends of justice.***
3. ***That each party do bear its costs.***

The application is supported by affidavit of the applicant and based on the following grounds:-

1. ***That the Chief Magistrate's court has the jurisdiction and is competent to try and dispose of this matter.***
2. ***That the High Court diary is highly congested and this matter will be expeditiously disposed of if transferred to the Chief Magistrate's court.***
3. ***That no prejudice will be occasioned upon the Respondents.***
4. ***That the application has merits and it is duly fair and just that it be allowed by this Honourable Court.***

The applicant in his affidavit stated he sued the defendants over a defamatory broadcast made on 18<sup>th</sup> June, 2007. That the matter has not been heard to date at the High Court.

The respondent filed grounds of opposition dated 15<sup>th</sup> August, 2011 as follows:-

1. ***The application is frivolous, vexatious, mischievous and an abuse of the court process.***

2. ***The application is misconceived and bad in law.***
3. ***The application is instituted in bad faith and is tainted with malafides.***
4. ***The application is intended to delay and/or defeat justice.***
5. ***Plaintiff/Applicant is guilty of inordinate and unreasonable delay.***
6. ***No substantial grounds have been cited to warrant granting of the orders sought.***
7. ***Whereas the applicant alleges congestion in the High Court, no attempts have been made to fix the suit for hearing.***
8. ***The plaintiff/applicant is shopping for a forum suitable to him to dispose off the matter.***
9. ***The High Court is best placed to deal with this matter and plaintiff/applicant had this in mind when he filed the initial suit.***
10. ***The application has no merit whatsoever.***

The Counsel for the applicant Mr. C. Kariuki Advocate argued that the applicant's claim and award expected is not likely to exceed Kshs.3,000,000/= and/or the jurisdiction of the Chief Magistrate's Court at Meru and that by transferring the suit the respondent won't be prejudiced.

He also argued that the court has jurisdiction to transfer the suit on its own motion. Mr. Nyaga Advocate opposed the application and said the application is not in good faith and stated that it is High Court which is best placed to deal with this matter and the respondent had incurred costs.

Mr. C. Kariuki Advocate in reply stated that no prejudice or malafide that had been demonstrated and urged the court to allow his application.

Section 18(1) (a) of Civil Procedure Act provides:-

"On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage;

(a) Transfer any suit, appeal or other proceedings pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same.

I find that the applicant has properly brought this application before the Court after notice to the respondent. The claim is expected not to exceed Kshs.3,000,000/= which sum is within the pecuniary jurisdiction of Chief Magistrate's court. That no party would be prejudiced by transfer of the case as the place of trial is within the Meru Law Courts which is in the same premises with the High Court.

I do not find any good reasons for respondents refusal of the transfer of this suit. The alleged bad faith and prejudice has not been demonstrated before this court and I find none from the grounds of opposition.

The issue of costs shall be decided at the time of determination of suit and I cannot see how the transfer would affect parties costs.

In view of the foregoing this suit is ordered to be transferred to the Chief Magistrate's Court at Meru for trial and determination.

Costs be in the cause.

DATED, DELIVERED AT MERU THIS 18<sup>TH</sup> DAY OF NOVEMBER, 2011.

**J. A. MAKAU**  
**JUDGE**

Delivered in open court in presence of:

1. Mrs.Kaume h/b for C. Kariuki )
2. Mr. Mwirigi for ) for applicants

**J. A. MAKAU**  
**JUDGE**