



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION – MILIMANI
MISC CAUSE NO 780 OF 2010

NATION MEDIA GROUP
LTD.....PLAINTIFF

VERSUS

MOHAMED
SURAW.....DEFENDANT

RULING

The application before the court is brought by way a Notice of Motion dated 2nd August, 2010, and taken out under **Sections 14, 17, 18, 1A, 1B** and **3A** of the **Civil Procedure Act**, and all other enabling provisions of the law. The Plaintiff/Applicant seeks the following orders from the court –

- 1) **That the application be certified as urgent and service at first instance be dispensed with.**
- 2) **That there be a stay of proceedings in respect of Wajir SRMCC NO. 11 of 2010 Mohamed Suraw v Nation Media Group Ltd pending the hearing and determination of this application interpartes.**
- 3) **That the suit namely Wajir SRMCC No 11 of 2010, Mohamed Suraw v Nations Media Group Ltd be transferred to the Magistrate’s Court at Milimani Commercial Courts in Nairobi for any further proceedings, hearing and final disposal.**
- 4) **That until the transfer of the said suit to the Magistrates court at Milimani Commercial Court in Nairobi there be a stay of all further proceedings relating to Wajir SRMCC No. 11 of 2010, Mohamed Suraw v Nations Media Group Ltd**
- 5) **That the costs of this application be provided for.**

The application is supported by annexed affidavit of Sekou Owino, the legal officer of the applicant company, and is based on the grounds that –

- (a) **The Defendant is based in Nairobi with its registered office in Nairobi.**
- (b) **The publication being complained of was published in Nairobi.**
- (c) **The Defendant’s and Plaintiff’s Advocates are based in Nairobi.**

- (d) **There is no link established between Wajir Cour and the institution in the suit.**
- (e) **It would be in the interest of justice to transfer the suit.**
- (f) **No prejudice would be suffered by the applicant if the suit was transferred.**
- (g) **Further grounds to be adduced at the hearing hereof.**

Opposing the application, Mohammed Suraw, the Respondent herein, filed a replying affidavit in which he attests, inter alia, that the Applicant has admitted that summons to enter appearance together with the plaint were duly served and acknowledged but that the applicant has not given any reason as to what drew its interest into finding out where the suit had been filed. He also deposes that the fact that the applicant has its registered offices in Nairobi does not limit and/or affect the place of suing and it is a misrepresentation of facts and quite misleading of the applicant to state that there is no mention of Wajir at all in the Plaint. He further avers that he has been advised by his advocates that the place of suing is determined by the cause of action or where the Defendant resides at/or carries on business. At the oral canvassing of the application, Ms Janmohamed appeared for the applicant while Mr Otieno appeared for the Respondent. After considering the rival submissions by counsel, I note from Paragraph 1 of the plaint that the plaintiff is a male adult of sound mind residing and working for gain in Nakuru within the Republic of Kenya. In the second paragraph thereof, the defendant is described as a Limited Liability Company engaged in publication, circulation and distribution of Newspapers and in particular the “Nation” and its registered office is at Nation Centre, Kimathi Street, Nairobi. I further note from paragraph 3 that at all times material to this suit, the plaintiff is an elected councillor representing Ronda Ward within the Municipal council of Nakuru.

Arising from these particulars, I further note that Section 14 of the Civil Procedure Act states as follows –

“Where a suit is for compensation for wrong done to the person..., 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 units of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of those courts.”

This provision is followed by Section 15 which, in turn, provides as follows –

“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.”

Furthermore, explanation (2) in the same section states that –

“A corporation shall be deemed to carry on business at its sole or principal office in Kenya, or, in respect of any cause of action arising at anyplace where it has also a subordinate office, at such place.”

Applying the above provisions of the Civil Procedure Act to the facts of this case, it is to be observed that the Plaintiff’s complaint against the Defendant relates to defamation in respect of which he seeks damages. In the plaint he admits expressly that he resides and works for gain in Nakuru. The defendant in this case is a Limited Liability Company which means that it is also a corporation. Under explanation No. (2) of **Section 16, (supra)** the Defendant herein is deemed to carry on business at its sole or principal office in Kenya which the Plaintiff has admitted is at Nation Centre, Kimathi Street, Nairobi. A reading of the combined effect of Section 15 (a) and explanation (2) thereunder dictates that the Plaintiff should have filed his case where the Defendant voluntarily carries on business, which is in Nairobi. There is no rational explanation as to why this suit was filed at Wajir when the Rules of procedure prescribe clearly

that it ought to have been filed in Nairobi.

I understood Mr Otieno for the Respondent to argue that it is rather late in the day to seek this transfer since the Applicant has not entered appearance and has not made an attempt to do so. In respect thereof, he submitted that so far, the applicant has no business in this suit and has no business seeking its transfer. He also referred to Chapter 10 of the Laws of Kenya which deals with Magistrates' Courts and also clothes them with jurisdiction. With respect, the provisions in the Magistrates' Courts Act are subject, like those in any other legislation, to the provisions in **Sections 11 to 18** of the **Civil Procedure Act** as to the place of suing. In that regard **Section 17** of the said Act reads as follows –

“Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court; and the High Court after considering the objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed.”

It noteworthy that the Defendant is entitled to apply to the High Court to have the suit transferred **“at the earliest possible opportunity.”** The earliest opportunity for the Defendants herein to apply for the transfer came when they consulted with their advocates before entering appearance, and the Advocates proceeded promptly to file this application. I need say no more about that aspect of the matter.

For the above reasons, I am persuaded that the application for the transfer of this suit from Wajir to the Chief Magistrates Court, Nairobi is meritorious and I accordingly make the following orders –

1) The suit in Wajir SRMCC No 11 of 2010, Mohamed Suraw v Nation Media Group Ltd be and is hereby transferred to the Chief Magistrates' Court, Milimani, Nairobi for allocation for hearing and determination.

2) Costs in the cause.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 18th day of November 2010

L NJAGI

JUDGE