



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL & TAX DIVISION – MILIMANI
MISC. CASE NO. 1070 OF 2009

LIVINGSTONE W.
JOEL **PLAINTIFF**

VERSUS

KENYA LITERATURE
BUREAU **DEFENDANT**

R U L I N G

The Applicant in the Chamber Summons dated 5th November, 2009 is the Plaintiff in **Milimani CMCC No. 5767 of 2003**, the subject matter of the application. He has moved the Court under **Sections 17 of the Civil Procedure Act and Sections 12 and 15 of the Labour Institutions Act, No. 12 of 2007.**

The application seeks an order of this Court to transfer the above-stated suit from the Milimani Commercial Court to the Industrial Court for expeditious disposal. It is supported by the affidavit of Susan Omwake, Advocate for the Applicant in which she depones to the facts supporting the grounds upon which the application is based, which are:

- (a) That the Industrial Court has the pecuniary jurisdiction to hear and determine the suit.***
- (b) That it is in the interests of justice that the suit be transferred in order that it is expeditiously heard and determined.***
- (c) That the Defendant will not be prejudiced in any way if the suit is transferred.***

The application is opposed on the strength of Grounds of Opposition filed on 23rd November, 2009 to the effect that;

- 1. The application is bad in law.***
- 2. That the Chief Magistrate's Court has jurisdiction to hear and determine the suit.***
- 3. That the application is frivolous, vexatious and an abuse of the process of Court.***

The Respondents did not attend at the hearing of the application, despite being put on notice and the same proceeded *ex parte*. Counsel for the Applicant submitted that she relied solely on the supporting affidavit,

and that the Grounds of Opposition filed herein were devoid of merit.

Section 17 of the **Civil procedure Act** endows the High Court with the discretionary power to transfer, either on the application of any Defendant or of the Court of its own motion, any suit instituted in any subordinate Court, where the same may be instituted in any one or more subordinate Courts, and to determine which of the several Courts having jurisdiction shall determine the suit. The said provision reads as follows:

“17. 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 is not disputed that the Chief Magistrate’s Court has jurisdiction to hear and determine the suit. However, considering that the power to transfer suits under **Section 17** of the **Civil Procedure Act** does not extend to applications made by Plaintiffs, I am of the considered view that the said provision has not been properly invoked. For that reason I am unable to exercise my discretion in favour of the Plaintiff/Applicant. The application is dismissed with no order as to costs.

SIGNED and **DELIVERED** at **NAIROBI** this 10th day of December, 2010.

M.G. MUGO
JUDGE

In the presence of:

Mr. Ataka holding brief for M/S Omwakwe

For the Applicant

No appearance

For the Respondent