



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

Civil Case 56 of 2005

PIUS OMBWERA NCHORE PLAINTIFF

VERSUS

1. MBIYU MWANGI)

2. JOHN MAONCHA MAGEMBE) DEFENDANTS

RULING

The first defendant filed an application by way of notice of motion brought under **Sections 3A, 15, and 18(1)A** of the **Civil Procedure Act**. He sought an order for transfer to this suit to the Chief Magistrate's Court at Nakuru for hearing and disposal. The application was made on the grounds that the cause of action arose at Salgaa which about 10 kilometres from Nakuru and that there are six other matters arising from the same cause of action which were filed at the Chief Magistrate's Court, Nakuru. One of those cases, **CMCC No.32 of 2003, Clinton M. Bosire vs. Johon Maoncha Magembe and 2 others** had been adopted as a test suit on liability. It was further stated that the first defendant resides at Nakuru and that the proposed transfer was intended to save time and costs of witnesses who will be required during the trial.

The application was opposed by the plaintiff who filed grounds of opposition through M/s. Obaga and Company Advocates. The plaintiff stated therein that the application by the first defendant was incompetent, misconceived and an abuse of the court process.

Mr. Ochwangi, who held brief for M/S Mbigi Njuguna & Company, for the applicant and Ms. Obaga for the plaintiff made brief submissions in support of their respective client's arguments. Counsel for the plaintiff submitted that Sections 14 and 15 of the Civil Procedure Act gave the plaintiff the option of where to file his case. Section 14 provides that where the suit is for compensation for a 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 works for gain within the local limits of another court, the suit may be instituted at the option of the plaintiff in either of those courts. Under section 15 subject to the aforesaid provisions every suit is required to be instituted in a court within the local limits of whose jurisdiction –

(a) the defendant or each of them at the time of

the commencement of the suit resides or

carries on business,

(b) any of the defendants at the time of

commencement of the suit resides or carries

on business or works for gain,

(c) the cause of action wholly or in part arises.

Ms. Obaga submitted that the first defendant resides in Nairobi and the second defendant carries on business between Kisii and Nakuru. At the time of filing the suit the second defendant was residing in Kisii. The plaintiff's witnesses were also said to be at Kisii. More importantly, the plaintiff anticipated an award of damages which is beyond the pecuniary jurisdiction of the subordinate court. For that reason it was submitted that the matter ought to be heard before this court.

Looking at the nature of this case, the same could have been filed either in Nakuru where the cause of action arose or in Kisii where the second defendant and the plaintiff reside. The particulars of injuries set out in the plaint are quite serious. There is also a substantial claim of special damages. The plaintiff is also claiming damages for loss of earnings and future medical expenses as well as nursing care. If the plaintiff is successful in his claim the damages that may be awarded are likely to be beyond the pecuniary jurisdiction of a Chief Magistrate's Court. For that reason alone, it will not be proper for this court to order transfer of this case from this court to the Chief Magistrate's Court at Nakuru as prayed. Consequently, I dismiss the first defendant's application with costs to the plaintiff.

DATED, SIGNED and DELIVERED at KISII this 4th day of July, 2008.

D. MUSINGA

JUDGE

Delivered in open court in the presence of:

Mr. Bigogo HB for Miss Obaga for the plaintiff

Mr. Ochwangi HB for Mr. Njuguna for the defendants.

D. MUSINGA

JUDGE