

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Miscellaneous Application 2 of 2006

EDWARD GITONGA NJAGI APPLICANT

VERSUS

THE CO-OPERATIVE INSURANCE OF KENYA LTD. RESPONDENT

RULING

This is an application for the transfer of Meru HCCC No. 27 of 2005 from the High Court at Meru to Nairobi for trial and final determination on the grounds that the applicant's registered office is at Nairobi and the letter of employment of the respondent, the subject matter of the suit was executed and terminated at Nairobi. That if the hearing of the suit proceeds at Meru the applicant will be subjected to great expense.

It is finally averred that the applicant's intended witnesses work and live at Nairobi. The respondent has opposed the application arguing that the same has been brought in bad faith as the applicant has no valid reason for seeking the transfer of the case to Nairobi while both courts have equal jurisdiction. He has further deposed that a similar application as the present one was made by the applicant in the High Court at Nairobi and dismissed in Nairobi HC. Misc. Application No. 950 of 2005. Regarding the last averment, the applicant confirms that Nairobi HC. Misc. Application No. 950 of 2005 was withdrawn and not dismissed.

I have duly considered the foregoing rival arguments and hold the following view on the matter. Although the High Court, in terms of Section 60(1) of the Constitution, has unlimited original jurisdiction both in civil and criminal matters, its jurisdiction in civil matters must be exercised as provided for under the Civil Procedure Act, namely sections 14 and 15 thereof. It is only in the compliance with the above procedure that an orderly litigation can be achieved.

There is no dispute in this application that the respondent was engaged by the applicant at Nairobi and further that the engagement was terminated at Nairobi. It is also common ground that both courts (Nairobi and Meru High Courts) are seized of the necessary jurisdiction to try the dispute between the parties.

In the exercise of the court's discretion and taking into consideration the foregoing it is ordered that this suit be and is hereby transferred to Nairobi High Court for hearing and final determination.

I am also satisfied that HC. Misc. Application No. 950 of 2005 was not heard and determined on merit. Costs in the cause.

Dated and delivered at Meru this 7th Day of November 2008.

W. OUKO

JUDGE