



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC APPLICATION NO. 18 OF 2007

GEOFFREY NGEERA..... APPLICANT

V E R S U S

PAUL M'ETHINGIA..... RESPONDENT

R U L I N G

1. The Application dated 7.2.2007 seeks orders that CMCC No. 587/2001 pending at Meru Chief Magistrates court be transferred to Maua Principal Magistrate's Court for hearing and determination. In the supporting affidavit of Geoffrey Ngeera sworn on 7.2.2007, it is deponed that the suit relates to certain customs and practices of the Njuri Ncheke, the Meru Council of Elders and specifically those obtaining in the Igembe and Ntonyiri areas. That some of the witnesses to be called come from those areas and are very old and would be hard put to make the journey to Meru Town during the hearing. That therefore it would be cheaper, convenient and in the interests of justice that the suit be heard in Maua which is much nearer the said "experts".
2. In opposing the Application, the Respondent, Paul M'Ethingia depones in his Replying Affidavit sworn on 8.3.2007 that he intends to call witnesses from Mwimbi area in Tharaka District and also from Meru South District and therefore the convenient place to have the suit heard would be Meru. That the Maua court in any event lacks jurisdiction and the Application is misconceived and ought to be dismissed.
3. Having heard submissions by counsel along the same lines as above, my respectful opinion is that the Application is merited and should be allowed for the following reasons:-
4. Firstly, CMCC 587/2001 (Meru) relates to a dispute between the Applicant and Respondent arising from what is called at paragraph 4 of the Complaint, "various land and partnership" matters. It also involves a third party, one Erastus K. Mbaabu. The Respondent in that suit is described as "Chairman of Njuri Ncheke Council of Elders of Meru North District." It is also pleaded that the Applicant is a resident of "Antoroche within Meru North District". Since therefore the cause of action arose within Meru North District and parties are resident in the same District then Maua Principal Magistrates Court is

sued territorially to hear the matters. Further it is proper within the meaning of s.12 and s. 15 of the Civil Procedure Act that the suit ought to be tried in that court. The argument that it has no jurisdiction is misguided and misplaced and cannot be supported by any law or even fact.

5. Secondly, the argument that witnesses for the Respondent would come from Tharaka District and Meru South District is an afterthought, in my view. I say so because in a Statement of Defence dated 27.8.2001, the Defendant states that as Chairman of Njuri Ncheke Council of Elders, he does not require permission from anyone to call meetings of the council. This is in answer to the Applicant's contention that his consent was required before such a meeting. This is the only point of contest raised in the Defence and I do not see why elders from other areas have to be called to justify it. It is not probably my place to say so but clearly such an attempt would be stretching the law of evidence very far indeed.

6. Thirdly, as transfer of cases is made at the discretion of this court, I think that in the instant case and for reasons purely of convenience and to allow parties access to justice at the nearest to their place of abode, this Application finds favour.

7. In the end, the Application for transfer of the suit CMCC 587/2001 (Meru) to Maua PM's Court is allowed as prayed.

8. Costs shall be in the cause.

9. Orders accordingly.

Dated, signed and delivered in open court at Meru this 25th day of April 2007

ISAAC LENAOLA

JUDGE

In The Presence Of

Rimita Advocate for the Applicant

N/A Advocate for the Respondent

ISAAC LENAOLA

JUDGE