

REPUBLIC OF KENYA

IN THE HIGH COURT AT MERU

MISCELLANEOUS APPLICATION NO. 107 OF 2006

NDEGE M'MARANGU.....APPLICANT

VERSUS

NATIONAL BANK OF KENYA.....RESPONDENT

RULING

This application seeks in the main two prayers, namely, that there be a stay of proceedings in Milimani Chief Magistrate Civil Case No.13291 of 2004 and two, that the said Milimani Chief Magistrate Civil Case No.13291 of 2004 be transferred to Meru Chief Magistrate's for hearing and final determination. The application is based on the grounds that the cause of action arose in Meru, the applicant and his potential witnesses reside in Meru, the subject matter is in Meru while the respondent's witnesses are likely to be drawn from its Meru Branch.

Despite service by the applicant of the application the respondent has not filed a response. However, counsel holding brief for counsel representing the respondent argued that the application is bound to delay the hearing of the suit which is scheduled for November, 2007.

The High Court, under Section 18 of the Civil Procedure Act, can, on the application of a party or on its own motion, at any stage, withdraw a suit pending in a subordinate court and transfer it for trial and disposal to any subordinate court competent to try the same.

These are wide powers exercised only subject to the court being satisfied that the court seized of the case and that to which it is sought to be transferred have jurisdiction.

On the other hand, Sections 12 to 16 of the Civil Procedure Act outlines the Guidelines on where suits can be instituted. Relevant to this application is Section 15. The applicant has averred that he resides in Meru; that the cause of action arose in Meru; that the loan in question was obtained from the respondent's branch in Meru and that all potential witnesses are likely to be drawn from Meru.

These averments have not been challenged. I find no reason at all why the suit was instituted in Nairobi. The subordinate court at Milimani, Nairobi has jurisdiction so does the Chief Magistrate Court at Meru.

I will exercise my discretion in favour of the applicant who would otherwise be subjected to unnecessary travel and other expenses in defending the suit in Nairobi.

In the result Milimani Chief Magistrate Civil Case No.13291 of 2004 is ordered to be transferred to the Chief Magistrate Court at Meru for trial and final determination.

The respondent to pay to the applicant the costs of this application.

DATED AND DELIVERED AT MERU THIS 18th DAY OF May, 2007.

W. OUKO

JUDGE