



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Misc Appli 21 of 2006**

SILAS KIOGORA 1ST APPLICANT

JOSEPH MUTHOMI 2ND APPLICANT

- VERSUS -

LOISE NKATHA MUCHIRI RESPONDENT

RULING

This application seeks the transfer of CMCC No. 361 of 2005 pending in the subordinate court to this court for hearing and final determination.

That application is based on the grounds that there is pending in this court, HCCC 86 OF 2000 which was filed earlier and which raises the same issues as those in CMCC NO. 361 OF 2005. That the parties to the two suits are the same save for the County Council of Meru, the 3rd defendant in HCCC No. 86 of 2000.

The respondent in her replying affidavit argues that she filed the High Court suit (No. 86/2000) in 2000 and served the respondent who entered appearance and filed defence. That in filing CMCC 361 of 2005 in the year 2005, the applicants deliberately failed to disclose the existence of HCCC NO. 86 of 2000. Instead the applicants proceeded to apply for summary judgment. Upon being served with this application the respondent also filed an application seeking the striking out of the suit (CMCC NO. 36 OF 2005), which has not been determined.

These submissions have received due consideration by the court. Section 18 of the Civil Procedure Act gives a general power of transfer of all suits, which may be exercised at any stage of the proceedings even *suo motu* by the High court. In considering a similar application based on Section 18 of the Uganda Civil Procedure Act which is in *pari materia* with section 18 of our Code, Sir Udo Udoma, in Kagenyi v Misiramo and Another (1968) EA 48 sated the law in this area as follows;

“It is a well established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities for stating that the principal matters to be taken into consideration are balance of convenience, questions of expense,

interest of justice and possibilities of undue hardship; and if the court is left in doubt as to whether under all the circumstances it is proper to order a transfer, the application must be refused”

What the above case was stating is that there are many things a court must consider before exercising its discretion to transfer a suit. Like in the exercise of any discretion, the court must act judicially and the party seeking the order must come with clean hands. First, the applicants filed the suit they now seek to have transferred to this court when they knew fully well that a similar suit was pending in this court. Secondly in filing the suit in the subordinate court the applicants deliberately failed to disclose the existence of the High court suit.

Even in this application the applicants have not bothered to indicate the status of the case they are seeking to transfer. That suit has their application for summary judgment and the respondent’s for striking out the suit.

I find no reason for transferring CMCC No. 361 of 2005 to this court. In the result this application is dismissed with costs to the respondent.

Dated and delivered at Meru this 17th Day of May, 2007

W. OUKO

JUDGE