



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Misc Civil Appli 29 of 2007

FLORENCE KARIMI MWENDA PLAINTIFF

VERSUS

WILFRED KIMATHI 1ST DEFENDANT

ZIPPORAH KAMBURA MUTHOMI 2ND RESPONDENT

MOSES MWONGERA M'RINGERA 3RD RESPONDENT

COUNTY COUNCIL OF ISIOLO 4TH RESPONDENT

RULING

This is an application for transfer of Meru CMCC No.526 of 2003 from Meru Law Courts to Isiolo Law Courts for hearing and final determination. The applicant is the 1st defendant in the suit in question.

Her grounds for bringing the application are that the subject matter is situated at Isiolo, the defendants reside and carry business at Isiolo town, the court at Isiolo has jurisdiction to entertain the suit and finally that the orders sought if granted will save the parties costs.

The 3rd respondent, who is the plaintiff in the suit has opposed the application in his replying affidavit arguing that the defendants including the applicant did not, in their defence, object to the jurisdiction of the court. That the case is partly-heard with pleadings closed. It is further averred that Meru, Chief Magistrate court is superior to Isiolo Magistrate court which lacks jurisdiction and that it will be more costly for the parties to move to Isiolo.

Section 18 of the Civil Procedure Act confers on the High Court the power to transfer any suit pending before a subordinate court for trial or disposal to another subordinate court competent to try the suit. This power is exercised either on the application of any of the parties to the suit or on the court's own motion.

A suit will be transferred from one subordinate court to another only if the court seized of the same has in the first place jurisdiction to hear it and conversely if the court to which its transfer is sought also is competent to hear the same.

As a general rule, and subject to the pecuniary limitations suits relating to, among other things, determination of any other right to or interest in immovable property must be instituted in the court within the local limits of whose jurisdiction the property is situated.

All other suits must be instituted in court within the local limits of whose jurisdiction either the defendant or each of the defendants actually reside or carries on business, or works for gain or where the cause of action wholly or partially arose.

Clearly the suit in question ought to have been instituted at Isiolo Law Courts as the dispute involves land located there, all the defendants, according to paragraphs 1, 2 and 3 of the plaint are residents and working for gain at Isiolo. Both the Chief Magistrate Court, Meru and the Senior Resident Magistrate, Isiolo have jurisdiction to try the suit herein.

It must be remembered, however, that the only determining factor as to the place of trial where the subject matter is immovable property is the location of the property.

In this case, I come to the conclusion that Isiolo Court is the right place for the hearing of this case. A transfer of a suit can be ordered at any stage before the final determination.

It is therefore immaterial that the matter has advanced in hearing. The court to which the case has been transferred can elect either to rehear the matter or proceed from the point at which it is transferred.

The only undoing of the applicant is to wait until this late to seek a transfer, even though, the 2nd and 3rd defendants in their joint statement of defence denied jurisdiction of the court. Issues of jurisdiction must be raised as early as possible.

For the reasons stated the application dated 12th March, 2007 is allowed and it is ordered that the suit Meru CMCC No.526 of 2003 be and is hereby transferred to Isiolo Law Courts.

DATED AND DELIVERED AT MERU THIS 13TH DAY OF JULY, 2007

W. OUKO

JUDGE