



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI

Misc Appli 45 of 2006

RIOKI ESTATE (1970 LIMITEDAPPLICANT

V E R S U S

PETER NDUJA MUNJOGU..... RESPONDENT

R U L I N G

There has been considerable delay in the preparation and delivery of this ruling. The same was occasioned by my serious illness in the year 2006 and the long attendant recuperation. The delay is regretted.

This is an application under section 18 of the Civil Procedure Act, Cap. 21 (the Act), for transfer of Milimani CMCC No. 8221 of 2005 from that court to the Senior Resident Magistrate's court, Kiambu. The Applicant is the plaintiff in the suit while the Respondent is the defendant. The application is made upon the following grounds as they appear on the face thereof:-

- (i) That the plaintiff carries on its business at its principal offices in Kiambu.
- (ii) That the plaintiff's witnesses reside in Kiambu and it will be expensive to produce them at Nairobi.
- (iii) That the defendant resides and works for gain in Kiambu.
- (iv) That no rights have accrued to the defendant yet, and he will thus not be prejudiced by transfer of the suit as sought.
- (v) That it is in the interests of justice that the order of transfer be made.

There is a supporting affidavit sworn by one DAVID N. CHUCHU, the chairman of the Applicant.

The Respondent has opposed the application upon the legal ground that the suit is a nullity for having been filed in a court without jurisdiction to try and determine it, and that therefore the same cannot be transferred. There is a replying affidavit sworn by the Respondent and filed on 1st March 2006.

I have considered the submissions of the learned counsels appearing, including the cases cited. I have also perused the plaint and defence. In the plaint it is pleaded at paragraph 1 that the plaintiff is a limited company incorporated in Kenya and having its registered office in Kiambu. The defendant is said to be residing and working for gain in Kiambu (paragraph 2).

Regarding the cause of action, it is pleaded, *inter alia*, that on diverse dates between the years 2001 and

2003 during his tenure as a director of the plaintiff, the defendant illegally and fraudulently allotted to himself 118 shares in the capital of the plaintiff valued at Kshs.236,000/00 without paying consideration therefor. It is further pleaded that the defendant illegally and fraudulently awarded himself retirement benefits to the value of KShs. 170,000/00. The reliefs sought are, *inter alia*, that the defendant's share certificate to the 118 shares be cancelled and that he refunds to the plaintiff the aforesaid sum of KShs. 170,000/00. It is not pleaded in the plaint where the cause of action arose; but it is not difficult to discern from the averments that it must have arisen at the plaintiff's registered office at Kiambu.

In his defence the Respondent has pleaded, *inter alia*, that the court lacks jurisdiction to hear the suit in view of the averments in paragraphs 1 and 2 of the plaint.

The suit sought to be transferred is not in respect of any immovable property. Regarding the place of suing, therefore, section 15 of the Act is the pertinent legal provision. It dictates that the suit should have been filed at Kiambu where the defendant actually and voluntarily resides and personally works for gain. It was thus filed in the wrong court; the Chief Magistrate's court, Milimani, has no jurisdiction to hear and determine it.

This court has no jurisdiction to transfer a suit filed in a court without jurisdiction to another court with jurisdiction following the principle established in the well-known Ugandan case of **KAGENYI – vs – MUSIRAMO & ANOTHER**, [1968] E. A. 43. This case has been cited with approval by various judges of this court. The principle of law also appears to have met approval by our Court of Appeal. See the case of **KENYA SEED CO. LTD. – vs - JOSEPH BOSIRE**, Nairobi Civil Appeal No. 72 of 2002 (Unreported).

Milimani CMCC No. 8221 of 2005 having been filed in a court without jurisdiction to hear and determine it, the court has no jurisdiction to transfer it to another court with jurisdiction. I must therefore refuse the present application. It is hereby dismissed with costs to the Respondent. There will be an order accordingly.

DATED AT NAIROBI THIS 22ND DAY OF AUGUST, 2007

H. P. G. WAWERU

J U D G E

DATED AT NAIROBI THIS 24TH DAY OF AUGUST, 2007