



REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISC CIVIL APPLICATION 63 OF 2007

GITAU JOHN KIMEMIA.....APPLICANT

VERSUS

UNILEVER TEA COMPANY LTD.....RESPONDENT

RULING

This is a notice of motion filed by the applicant, Gitau John Kimemia under **Sections 3(A), 12, 15 and 18 of the Civil Procedure Act** seeking an order of this court of the transfer **Nairobi HCCC No.651 of 2007 Gitau John Kimemia vs Unilever Tea Kenya Limited** to Kericho High Court for hearing and final determination. The grounds in support of the application are stated on the face of the application. In summary, the applicant has contended that since the applicant and the respondent are resident within the jurisdiction of the Kericho High Court, the said suit which was filed in Nairobi, should be transferred to Kericho as it would be convenient to the parties. The application is supported by the annexed affidavit of the applicant.

The application is opposed. The respondent filed grounds in opposition of the application. The advocate of the respondent, Kiragu Kimani, has further sworn a replying affidavit in opposition to the application. In the said grounds of opposition, the respondent stated that the present application was an abuse of the due process of the court and was incompetent. It stated that if the applicant desired to have the suit pending in Nairobi transferred to the Kericho High Court, the applicant ought to have made the application in the said suit. Mr. Kimani swore that there were no sufficient or valid reasons advanced by the applicant for the said suit to be transferred from Nairobi to the Kericho High Court.

At the hearing of the application, Mr. Nyaingiri, counsel for the applicant reiterated the contents of the application. He submitted that this court had jurisdiction to order the transfer of the suit from Nairobi to Kericho High Court. He submitted that the said suit ought to have been filed in the first instance before the High Court of Kericho due to the fact that both parties were resident within the jurisdiction of the High Court at Kericho. He submitted that it would be in the interest of justice if the said suit were to be heard in a court nearest to where the parties were resident. Mr. Yego, counsel for the respondent opposed the application. He reiterated the contents of the replying affidavit and the grounds of opposition. He submitted that the applicant ought to have filed the present application before the High Court at Nairobi in the file in the said suit. He submitted that this court had no jurisdiction to transfer a suit from another High Court to this High Court. He maintained that the provisions under which the application was made only applied to transfer of suits within various subordinate courts and would not apply to suits filed in the High Court. He maintained that under **Section 60 of the Constitution of Kenya**, the High Court has unlimited territorial jurisdiction and therefore the said suit ought to be heard and determined in Nairobi. He urged the court to dismiss the application with costs.

I have read the pleadings filed by the parties in support of their respective positions in this

application. I have also carefully considered the submissions made before me, including the authorities cited. The issue for determination by this court is whether this court has jurisdiction to order a transfer of a suit from another High Court to this one in a miscellaneous application filed by one of the parties. In the present application, the applicant invoked the provisions of **Sections 12, 15 & 18 of the Civil Procedure Act** in his bid to have the suit filed in Nairobi transferred to this court. Do the said Sections of the **Civil Procedure Act** grant this court jurisdiction to entertain the application filed by the applicant? In **Francis Ndichu Gathogo vs Evans Kitazi Ondansa CA Civil Appeal No. 287 of 2002 (Nyeri) (unreported)**, the Court of Appeal held at page 3 as follows:

“The provisions of Section 15 are subject to the provisions contained in Sections 11, 12, 13, 14 and 15 of the Act and all these sections clearly deal with matters in subordinate courts. Section 15 itself can only deal with matters in the subordinate courts. That was the holding of the Court of Appeal for East Africa way back in 1958 in the case of Riddlesbarger and another vs. Robson & others [1958] EA 375 where the second holding of the court was that;

“(ii) S. 15 of the Civil Procedure ordinance[Act] applies only to subordinate courts”.

It is therefore clear that the provisions under which the applicant is relying on in support of his application for the transfer of the suit from the Nairobi High Court to Kericho High Court are not available to him. Secondly, the applicant should have filed the application for transfer in the suit sought to be transferred. This is due to the fact that this court does not have jurisdiction to order a transfer of a suit from another High Court to this High Court. This court has jurisdiction to order a transfer of a suit which it is seized with jurisdiction only. Further, there is no provision in the **Civil Procedure Act** that contemplates the transfer of a suit from one High Court to another solely at the convenience of one of the parties.

In the circumstances therefore, the present application was incompetently filed before this court. It is hereby dismissed with costs.

DATED at KERICHO this 7th day of NOVEMBER 2007

L. KIMARU

JUDGE