

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Misc Civ Appli 55 of 2006

ALFRED MABEYA.....APPLICANT

VERSUS

SAMPULI SALIM MWANYONJE

MARTHA WANGUI MURIITHI

ELIJAH WAICHANGURU MURIITHI.....RESPONDENTS

RULING

Alfred Mabeya, the Applicant in this application is one of the three defendants in Kwale RMCC No. 392 of 2005. The claim in that suit is for damages for an alleged libellous advertisement which was carried in the East African Standard Newspaper of 15th November 2005. The Applicant argues that the instructions were given in Mombasa and the publication was done in Nairobi and as he resides in Mombasa and the other two defendants reside in Nairobi the suit should have been filed either at Mombasa or Nairobi. He therefore applies under Sections 3A, 14, 16, 18 and 63(e) of the Civil Procedure Act for the withdrawal of that suit from Kwale Resident Magistrates Court and transfer of the same to Mombasa Chief Magistrate's Court for hearing and final determination.

He says it will be inconvenient for him to travel to Kwale court for the hearing of the case.

The Respondent did not file any replying affidavit. All we have is his advocate's statement from the bar that the Applicant and the other defendants in that case will not suffer any prejudice if the case is heard at Kwale. He also stated that as the effect of the defamation was felt at Kwale where his client and his witnesses reside the case should be heard there.

This being a defamation claim section 14 of the Civil Procedure Act is quite clear. The case has to be filed in the court with jurisdiction in the place where the defamation was published or where the defendant resides.

Mr. Mabeya argues that the alleged libellous advertisement was published in Nairobi. I do not agree with that. Publication in defamation is the communication of the defamatory words to someone other than the person defamed. It is not the place where the libellous article was printed. The article complained of having been carried in the East African Standard which has a nationwide circulation, the publication cannot be confined to Nairobi alone. It was published in all the places even out of Kenya in which that newspaper was circulated.

Although the East African Standard has nationwide circulation the Respondent, as I have said, has not filed a replying affidavit to show that the newspaper was indeed circulated in Kwale.

He has not stated that even in the plaint which he filed in the Kwale case. We cannot therefore assume that the newspaper was circulated in Kwale. That being the case and in view of the fact that two of the defendants in the Kwale case reside in Nairobi and the Applicant resides in Mombasa I think it will be more convenient for all the parties if the case is heard and disposed of at Mombasa. I therefore order the withdrawal of the Kwale RMCC No. 392 of 2005 from that court and transfer it to the Chief Magistrate's

Court at Mombasa for hearing and final disposal.

Each party shall bear its own costs of this application.

DATED and delivered this 10th day of February 2006.

D. K. MARAGA

JUDGE