

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc Appli 477 of 2004

SMALL HOLDER IRRIGATION SCHEME..... APPLICANT

VERSUS

TOM AMINO NYAMWAYA RESPONDENT

RULING

Before me is an application by way of notice of motion brought under Section 18 of the Civil Procedure Act seeking orders that the suit filed by the Plaintiff being Meru SPMC No. 827 of 2003 be transferred from Meru SPM Court to Nairobi Milimani Commercial Courts for hearing and final determination. The application is premised on the grounds that the cause of action took place in Nairobi and that the defendant and its witnesses reside and work in Nairobi.

The application is also supported by an affidavit sworn by counsel for the defendant who avers that the suit was wrongly filed at Meru Law Courts while the cause of action took place in Nairobi.

Under the provisions of Section 18(1) of the Civil Procedure Act, the High Court has power to: -

- (a) transfer any suit, appeal or other proceedings pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or**
- (b) withdraw any suit or other proceedings pending in any court subordinate to it and thereafter**
 - (i) try or dispose of the same; or**
 - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or**
 - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.**

Ordinarily an order sought like in the instant suit ought to be granted but since the suit was filed at the SPMC Meru within the jurisdiction of the High Court at Meru, the applicant ought to have made his application at Meru High Court for the orders sought and for that reason I decline to grant the orders sought and order that the applicant do file his application for the transfer of the suit the subject matter of this application being Meru SPMC No. 827 of 2003 at the High Court in Meru.

Those are the orders of this court. I make no order as to costs.

Dated at Nairobi this 9th day of February, 2006.

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J.L.A. OSIEMO

JUDGE.