

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Case 602 of 2000

JAZIRA AGENCIES NAIROBI LTD PLAINTIFF

VERSUS

HASSAN AHMED ZUBEDI DEFENDANT

R U L I N G

Application dated 2.3.02 seeking orders to transfer this suit to Nairobi under Order 46 CPC Rules was filed by the Defendant.

I have perused the provisions of Order 46 and I am of the view that this High Court has power to move a High Court suit from one District Registry to another even to the Central Registry at Nairobi. These powers are not governed by Section 18 of the Civil Procedure Act, which deals with transfer of suit from one subordinate to another by the High Court.

I have perused the grounds on which the application is based and I am satisfied that it is proper for this suit to be transported to Central Registry at Nairobi to be placed before Duty Judge for allocation.

Order 46(1) states:

“Every suit in the High Court may be instituted at Central Registry in Nairobi or in a District Registry. All the proceedings shall be taken in the District where the Defendant carries on business. Rule 5 empowers court to direct the place of trial. These provisions are not in contravention with provisions of Civil Procedure Act. Section 14 provides for with institution of suit where the defendant renders or carries on business but the plaintiff at his option may institute suit where the defendant resides or where business is carried on if there are in two different Districts. Rule 15 also provides for the filing of suit where the defendant resides or carries on business or cause of action arises.”

In this case, the defendant renders and carries on business in Nairobi. The plaintiff is a limited liability company having its registered office in Nairobi and they as well as defendant will suffer inconvenience if the trial is in Mombasa. The applicant swears that the cause of action arose in Nairobi and was to be performed in Nairobi. The respondent swears that some of the dealings were to be performed in Mombasa.

In the circumstances, I am of the view the suit should be tried in Nairobi Central Registry and I so order. The application is allowed and orders granted as prayed. Costs to the cause.

Dated and delivered at Mombasa this 24th day of March 2006.

J KHAMINWA

JUDGE

In the absence of parties.