

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

OCCIDENTAL INSURANCE COMPANY LTD.....
.....PLAINTIFF

VERSUS

JOEL MUNGATHA MANYARA1ST RESPONDENT

JAMES NGARE KAGUURU.....2ND RESPONDENT

RULING

This Ruling is delivered in the Miscellaneous application No. 1551 of 2005 brought by the Defendant in Civil Suit No. 96 of 2005 Tigania Resident Magistrates Court under the Notice of Motion dated 18th October 2005 and filed in this Court on 27th October 2005.

The applicant prays that the Tigania suit be transferred from that Court to Nairobi Milimani Commercial Court on the grounds, that the applicant's principal office is in Nairobi and that the insurance policy upon which the contract between the parties, giving rise to the action was "**made and executed at Nairobi**" The applicant contends that the suit was filed in Tigania with the deliberate intention of putting the Applicant into unnecessary expense, hardship and to prejudice its defence in the proceedings more so because, according to the applicant, none of the parties to the suit resides or carries on business in Tigania. For these reasons the Applicants dispute the territorial jurisdiction of the Tigania Court despite the fact that the cause of action arose along the Meru-Isiolo Road as appearing in paragraph 2 of the Plaint exhibited by the applicant as annexure "**RAE 1b**" to the Supporting Affidavit, a fact which is not denied in the statement of Defence annexed thereto as annexure "**RAE I C**"

The application is opposed on the strength of the 2nd Respondent's Replying Affidavit of 29th November 2005 filed on 7th November 2005. Submitting on behalf of the 2nd Respondent Counsel on record told this Court that the Cause of action occurred along the Meru Isiolo Road and that a judgment has already been entered in the suit sought to be transferred and invited the Court to refer to the Grounds of opposition filed on behalf of the Respondents herein on 7th November 2005.

It is not disputed that the suit sought to be transferred is a personal injuries claim which clearly fall under S. 14 of the Civil Procedure Act which clearly states as follows:

"14. Where a suit is for compensation for wrong done to the person or to movable property it, the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the Plaintiff in either of those courts".

Section 15 of the Act, which is sought to be relied on by the Applicants herein is clearly subjected to the limitation in section 14 and applies to other suits, not where a wrong to a person is in issue. I find that the filing of the suit in Tigania was procedurally in order and the reasons given for the transfer of the same are not good enough to make this court order a transfer in the circumstances. The Plaintiff's choice of the Tigania Court, being a court competent to try the suit under Section 11 of the Act, in exercise of the election allowed in Section 14 is proper, hence this application fails. The same is hereby dismissed with costs to the Respondents.

Dated and Delivered at Nairobi this 14th day of July 2006

M.G. MUGO

JUDGE

Delivered in the presence of

No appearance for the Applicant

Ndegwa holding brief fro Anyumba for the Respondent