



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

Misc Cause 237 of 2005

CAROLYNE JUDITH

ODUOR.....PLAINTIFF

VS

SELF MATSABE

OMUTIMBA.....DEFENDANT

RULING

By an application by way of Notice of Motion, pursuant to the provisions of section 18 & 3 A of the civil Procedure Act, and all enabling provisions of the Law, the applicant seeks orders:

- (1) *That Mombasa Children's Court case no.55/2005 at Mombasa Law Courts be transferred to Mumias Resident Magistrates Court for hearing and final disposal.*
- (2) *Costs be provided for.*

The application is based on the grounds:

- (1) *That the cause of action arose in Mumias within the jurisdiction of the Mumias Children's Court.*
- (2) *That the applicant and respondent were residing in Mumias division.*
- (3) *That the children in issue were born and were schooling in Mumias Division within–Butere Mumias District.*

The application is predicated upon the annexed affidavit of Seif Matsebe Mutimba sworn on the 13<sup>th</sup> day of September 2005.

For the applicant it was argued that Mombasa Children's Court case no.55 of 2005 (a copy of the plaint and defence whereof is exhibited as SMO1) should have been filed in Mumias where the applicant and the witnesses are residing and where the children are schooling. That it would occasion inconvenience and substantial expenses for the applicant to travel to Mombasa and his

witnesses. That it is in the interest of justice that their case should be transferred to Mumias.

The plaintiff was served by the application as per the affidavit of service of one Geoffrey Odera Nyambaka sworn on 10<sup>th</sup> March 2006 but failed to attend court. In the circumstances the evidence by way of affidavit of the applicant in support of the application stands unchallenged.

Section 18 of the Civil Procedure Act provides:

*“ (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High court may at any stage:*

*(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 proceeding 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.*

*(3) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”*

I have carefully analysed the evidence presented to me and find that the applicant has met the requirement of section 18 afore-quoted.

Accordingly, I order that Mombasa Children’s Court Case No.55/2005 be transferred from Mombasa to Mumias Resident Magistrate’s Court for hearing and disposal.

The Resident Magistrate Mumias is directed to retry the case or proceed from the point at which it is transferred, whichever would be just and expedient, in accordance with the provisions of section 18 (2) of the Civil Procedure Act.

DATED and delivered at Bungoma this 11th day of July 2006.

N.R.O. OMBIJA

JUDGE