



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Misc 14 of 2006

KENSILVER EXPRESS LTD.

.....**PLAINTIFF/APPLICANT**

V E R S U S

JOSPAT

MARANGU.....DEFENDANT/RESPONDENT

R U L I N G

1. The Application dated 3.2.2006 seeks a simple order; the transfer of CMCC No. 566.2005 pending for hearing before the Chief Magistrate's Court in Meru to the Senior Principal Magistrate's Court in Embu for hearing and determination. The same is premised on the provisions of s.18 of the Civil Procedure Act.
2. The grounds for seeking transfer are that:-
 - i) That all the witnesses that the applicant intends to call in Meru CMCC No. 566 of 2005 reside in Embu.
 - ii) That the cause of action in respect of Meru-CMCC No.566 of 2005 arose in Embu.
 - iii) That no prejudice and/or injustice will be caused to the Respondent if the aforesaid suit is transferred from Chief Magistrate's Court at Meru to Principal Magistrate's Court at Embu for trial and/or disposal.
 - iv) That Principal Magistrate's Court at Embu has jurisdiction to hear the aforesaid matter.
 - v) That it is just and convenient that the aforesaid matter be transferred to the Principal Magistrate's Court at Embu for trial.
 - vi) That it is interest of justice if the aforesaid suit is transferred to the Principal Magistrate's Court at Embu.
3. The said grounds are extrapolated upon in the supporting Affidavits of Jeseo Kisanya sworn on 3.2.2006 and on 15.2.2006 and on behalf of the Plaintiff Company. I see no reason to reproduce them as they speak for themselves.

4. The Application is opposed and in his Replying Affidavit sworn on 8.2.2006, the Respondent depones that no good reason has been given for the transfer of the suit to Meru and if it is the question of witnesses to be brought to court, the Applicant has buses that can accommodate those witnesses during the dates set for hearing.
5. His advocate has also argued that the Meru Chief Magistrate has jurisdiction to determine the matter even if the accident, subject of the suit, occurred within the administrative jurisdiction of the court in Embu. I am also asked to be guided by the decision in Kagenyi vs Musiramo and others (1968) E.A. 43 where sir Udo Udoma CJ considered an application similar to the one before me.

6. S.18 of the Civil Procedure Act provides as follows:-

“(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 proceeding 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.

ii) 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.”

7. The power granted to the High Court under that section, as I understand it, is discretionary and like all matters of discretion must be exercised judiciously and so that no party suffers undue prejudice.

8. I note from the plaint filed in CMCC 560/2005 that the accident, subject of that suit occurred along Embu-Runyenjes Road. I also note that the address for service for the Defendant is given as **“P.O. Box 34003 Nairobi”** and that presumably is where it has its headquarters. It may well have a branch in Meru as deponed by the Respondent but no matter, it is the place of the accident that is of relevance.

9. I quite agree with counsel for the Respondent that both the court in Meru and Embu have Jurisdiction by fact of s.3 of the Magistrate’s Courts Act and the authority of Kagenyi (supra) is relevant to that extent.

10. Having so said however, my mind has been swayed towards the Applicant by two matters unique to this case;

11. Firstly, the Applicant has expressed the view that it intends to call four witnesses who all reside in Embu and no prejudice would be caused to the Respondent if the suit is heard in Embu. The respondent has not provided any serious opposition to this contention save to say that he will incur expenses in going to Embu. I agree that he may well do so but the expenses would be minimal considering the distance between Embu and Meru.

12. Secondly, that the Respondent is an employee of the Law Courts in Meru and there is apprehension that he may tamper with the process of getting the suit set down for hearing. The Respondent counters this argument by saying that he has all along expedited the hearing of the suit and that he had in fact fixed it for hearing on 20.2.2006. The fears of the Applicant may well be unjustified as I do not see how the Respondent can influence the out come of his suit as he is not directly involved in the decision making process. However, there is the wider interest in doing justice and indeed for justice to be seen to be done. For that reason the suit ought to be heard in a place where the parties may find neutral in the sense that the Applicant would not have the view, however misguided, as I think it is, that the Respondent may subvert the cause of justice.

13. I am for these reasons and also because the cause of action arose in Embu inclined to grant prayer 3 of the Application dated 3.2.2006.

14. Costs shall be in the cause.

Dated, signed and delivered in open court at Meru this 4th day of July 2006

ISAAC LENAOLA

JUDGE.

In the Presence of

Mr. Gitonga Advocate for the Applicant

Mr. Okwaro Advocate for the Respondent

ISAAC LENAOLA

JUDGE.