

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS

Civil Suit 769 of 2003

JOHN BORU SOSO HALAKE
PLAINTIFF

VERSUS

WILSON KIPKEMBOI KIPKOTI1ST
DEFENDANT

PRUDENTIAL BANK LIMITED (IN LIQUIDATION).....2ND
DEFENDANT

DEPOSIT PROTECTION FUND BOARD..... 3RD
DEFENDANT

RULING

The Plaintiff seeks for an order that this file be transferred to the High Court Central Registry, Nairobi. The ground upon which the plaintiff seeks that prayer is that he is wheel-chair-ridden and he is not able to access the High Court at Milimani Commercial Court. The plaintiff states that it is in the interest of justice that this case be transferred to the Central Registry High Court Nairobi to enable him access the court when his matter is being heard.

The plaintiff exhibited a medical report prepared by Prof. L.N. Gakuu dated the 21st January, 2003. The report states that the plaintiff was involved in a road traffic accident in 1991 where he suffered serious injuries. He later on in 1997 suffered a stroke which made him paraplegic and wheel chair bound. The plaintiff has moved the court under Section 3A of the Civil Procedure Act.

The application was opposed by the defendant. The first ground of opposition was that the orders sought by the plaintiff are not available under the law. This the court would respond that there is wide power donated by Section 3A where the court can make such orders as may be necessary for the ends of justice. In any case the High court is one, section 60 of the Constitution of Kenya provides:

“There shall be a High Court, which shall be a superior court of record, and which shall have unlimited jurisdiction”

That being the case, the High Court is one whether it is situate at Central Registry Nairobi or at Milimani Commercial courts.

The defendant further opposed the plaintiff’s application on the basis that the plaintiff at the time of filing this case in Milimani Commercial Court, he was aware of his condition. The plaintiff in his supporting affidavit intimidated that he was previously represented by Mr. R.O. Gaya Advocate and it does seem that there were misunderstandings between the said advocate and the plaintiff. Indeed the plaintiff stated the differences were such that he was forced to change his advocate to the one now

representing him. The defendant did further state in its grounds of opposition that the plaintiff's application is intended to delay the hearing of this suit. The defendant did not elaborate in those grounds what delay is envisaged but in argument, did state that it is well known that the central registry has a backlog of cases. That to my mind is not sufficient reason to deny the plaintiff the prayers that he seeks. The defendant further objected to the application on the ground that the plaintiff would be all the time represented by counsel at the hearing of his matters even if the matter did proceed at the High Court Milimani Commercial court. That is indeed correct but the plaintiff having shown the desire to be present at the hearing of his matter the interest of justice demands that he be accorded that opportunity.

There is no reason shown to me why I should deny the plaintiff the orders he seeks.

The court grants the plaintiff the following orders:

- 1. That this suit be and is hereby transferred to the High court central Registry Nairobi for disposal**
- 2. The costs of the Notice Motion dated 24th July, 2006 shall be the defendants in any event.**

MARY KASANGO

JUDGE

Dated and delivered on this 19th day of October 2006

MARY KASANGO

JUDGE