

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Civil Misc Appli 24 of 2005

JOSEPH KIPRONO LANGAT.....APPLICANT

VERSUS

SIMON KIBII SOO.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

RULING

By a notice of motion dated the 14th of February 2005, the applicant has sought the order of this court to have **Kericho PMCC NO.556 of 2002** transferred from the Kericho Principal Magistrate's Court to Bomet Senior Resident Magistrate's Court for hearing and final disposal. The application is supported by the annexed affidavit of S.K. Mutai, the advocate for the applicant. In the said affidavit, he has sworn that both the plaintiff and the 1st defendant were resident within the jurisdiction of the Bomet Senior Resident Magistrate's court and therefore it would be just and fair to have the suit now pending before the Kericho Principal Magistrate's court transferred to that court. The application is opposed. The 1st respondent has filed grounds in opposition to the application. He has stated that this court lacks jurisdiction to transfer a suit which had been filed in a court without jurisdiction to a court which has jurisdiction. He urged this court to dismiss the application with costs.

At the hearing of the application, Mr. Korir learned counsel for the applicant submitted that all the parties to the suit were resident within the jurisdiction of the Senior Resident Magistrate's Court at Bomet. All the potential witnesses were residents within the jurisdiction of the said court. He submitted that this court should grant the application for transfer as it would not prejudice the 1st respondent in any way. He submitted that the issue of jurisdiction had been canvassed before the subordinate court and rejected and the said issue should not be re-litigated before this court. He urged the court to allow the application.

Mr. Matwere, learned counsel for the 1st respondent opposed the application. He submitted that the application was incompetent as it did not contain grounds in support thereof on the face of the application as envisaged by **Order L rule 7 of the Civil Procedure Rules**. He further took issue with the fact that the affidavit in support of the application was sworn by the advocate for the applicant. He submitted that the application for transfer cannot be granted by this court because the plaintiff had filed the suit in a court without jurisdiction. He argued that this court cannot transfer a suit from a court without jurisdiction to a court which has jurisdiction. He referred this court to two decided cases in support of his submission. He urged this court to dismiss the application with costs.

I have considered the rival arguments made by the parties to this application. I have also read the pleadings filed by the parties herein in support of their respective positions. The issue for determination by this court is whether the applicant has established a case to have the suit which was filed at Kericho Principal Magistrate's Court transferred to the Bomet Senior Resident Magistrate's court for hearing and final disposal. **Section 18 of the Civil Procedure Act** grants this court jurisdiction to transfer a civil suit from one subordinate court to another. The jurisdiction to transfer suits is however subject to the caveat that this court cannot breath life into an incompetent suit which was filed in a court without jurisdiction by transferring it to a court with competent jurisdiction (**See Omwoyo vs African Highlands & Produce**

Co. Ltd [2002] 1 KLR 698 and the decision of this court in **Kericho HC.Misc.Civil Application No.105 of 2005 Julius Panyako Sambu vs Khalif Seif Mbaruk t/a Takrim Bus Services (unreported)**).

In the present case, it is conceded by both the applicant and the 1st respondent that the Kericho Principal Magistrate's Court, the Sotik Senior Resident Magistrate's Court and the Bomet Senior Resident Magistrate's Court are within the area under the jurisdiction of the High Court sitting at Kericho. Whereas the applicant has submitted that this court can transfer the suit from the Kericho Principal Magistrate's Court to the Bomet Senior Resident Magistrate's Court for hearing and final disposal, the 1st respondent on the other hand submitted that this court ought to disallow the application on the ground that the civil suit was filed in the first place in a court without jurisdiction.

Having considered the arguments made, it is clear to this court that the applicant could have chosen to file the suit before the Kericho Principal Magistrate's Court (*now the Senior Principal Magistrate's Court*) If he was of the view that he was seeking an award of damages which is more than Ksh.300,000/= which is the pecuniary jurisdiction of the Senior Resident Magistrate's Court, Bomet. If he was of the opinion that the anticipated award would be within the jurisdiction of the Senior Resident Magistrate's Court at Bomet, then he had the choice of filing the civil suit before the said court.

In the instant application it is clear that when the applicant filed the suit before the Principal Magistrate's Court Kericho, there was no court with the jurisdiction of a Senior Resident Magistrates court at Bomet. However, a Senior Resident Magistrate was posted to Bomet in 2003. Therefore since 2003 there is a court at Bomet which can hear and determine the matters in dispute in this case. The applicant and the 1st respondent reside at Bomet. It is pursuant to this development that the subordinate court at Kericho advised the applicant (*rightly in my view*) to make an appropriate application before this court to have the said suit transferred to the Bomet Senior Resident Magistrate's Court for hearing and final determination.

I will therefore allow the application for transfer. The objection raised by the 1st respondent as regard the manner in which the application for transfer was made does not materially affect the merits of the application before this court. The advocate, who swore the affidavit in support of the application, swore to non-contentious facts. I hereby make an order that **Kericho PMCC No.556 of 2002** be transferred to the Bomet Senior Resident Magistrate's Court for hearing and final disposal.

The 1st respondent shall however have the costs of this application.

DATED at KERICHO this 2nd day of November 2006

L. KIMARU

JUDGE