



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA**

**CIVIL MISCELLANEOUS APPLICATION 8 OF 2005**

**GEOFFREY MUTALI.....PLAINTIFF/APPLICANT**

**VS**

**ALBERT MARANGO MANG'ENI**

**PATRICK SIMIYU MANG'ENI**

**ISAAC MUKAMBI MANG'ENI.....DEFENDANT/RESPONDENTS**

**HENRY WASILWA MAYAMA**

**ALBERT MWAMI MANG'ENI**

**R U L I N G**

Geoffrey Mutali, the applicant herein took out a motion under Sections 17 and 18 of the Civil Procedure Act and prayed for Eldoret C.M.C.C.C. Nos. 717, 718, 730, 733 and 950 all of 2004 to be transferred from Eldoret Chief Magistrate's court to the Bungoma Senior Principal Magistrate's court for hearing and disposal. The applicant filed an affidavit in support of the motion he swore on 9th December 2004. The five respondents namely; Albert Marango Mang'eni, Patrick simiyu Mang'eni, Isaac Mukami Mang'eni, Albert Mwami Mang'eni and Henry Wasilwa Mayama through the firm of Andambi & Co. Advocates filed grounds of oppositions to oppose the motion.

Ordinarily, the respondents were required to controvert the averments contained in the supporting affidavit by filing a replying affidavit but since there is no affidavit of that kind I can safely say that the facts deponed thereto remain unchallenged.

The applicant has deponed in the affidavit in support of the motion that he and the respondents do reside and work for gain within Milo sub-location, Sitikho location, Webuye Division of Bungoma District. The applicant has also stated in his affidavit that the suits arose from Webye S.R.M.'S court criminal case No. 409 of 2002 where the respondents were acquitted on 12th November 2003 under Section 215 of the criminal procedure code.

The applicant has also sworn that it would be expensive and inconvenient for both the applicant and the Respondents to travel all the way to Eldoret whereas the suits could have been instituted at Bungoma Senior Principal Magistrate's court.

As far as I can discern those aforementioned three main matters were placed before this court under oath

and since there was no replying affidavit they remain uncontested.

The Respondents' grounds of opposition indicate that the Eldoret Chief Magistrate's court has jurisdiction to hear and dispose of the suits filed therein. It is also alleged that the applicant's motion is meant to delay the hearing and determination of the suits. The Respondents are of the view that the applicant can be compensated by way of costs.

The provisions of section 17 and 18 of the Civil Procedure Act gives this court the power to withdraw and transfer suits from one subordinate court to another or to itself for hearing and final determination. This Jurisdiction however must be exercised judicially and with good and convincing reasons.

When exercising the aforesaid power this court should take into account the type of the proceedings, the reliefs sought, the convenience of the litigants and of course the costs and difficulties of the trial.

The Respondents have stated that the Eldoret Chief Magistrate's court has jurisdiction to hear and determine the suits. This fact is not contended. In fact the motion does not attempt to raise any objection as to jurisdiction of the Eldoret court. The applicant basically relies on the fact that it is convenient and cheap to have the cases heard and determined at Bungoma. Of course these are plausible reasons which this court is bound to consider.

The Respondents have also complained that the applicant is hell bent to delay the hearing and determination of these suits. I have not been shown how the applicant has attempted to delay the disposal of the suits.

It is not denied that the suits sought to be transferred arose from Webuye S.R.M's Court criminal case no. 409 of 2002. It is not also denied that all the litigants in this matter reside and work for gain within the vicinity of Bungoma Senior Principal Magistrate's court.

The final result is that I am satisfied that it is in the interest of justice to transfer the suits to Bungoma Senior Principal Magistrate's court for hearing and disposal. It is convenient and less expensive for each of the litigants. Consequently the motion dated 3rd December 2004 is allowed as prayed with costs to the applicant.

**DATED AND DELIVERED THIS 11th DAY OF February 2005**

**J.K. SERGON**

**JUDGE**