



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

MISC. CASE 488 OF 2004

DANIEL MUIRURI NJIHIA.....PLAINTIFF

VERSUS

ASSOCIATION OF MEMBER EPISCOPAL

CONFERENCES IN EASTERN AFRICA (AMECEA).....DEFENDANT

R U L I N G

This application, dated 5/7/04, seeks orders that: Civil Cause No. 216 of 2004, in the Chief Magistrate's Court, Machakos be transferred to the Chief Magistrate's Court, Nairobi [Milimani Commercial Courts] for hearing and disposal; then costs to be in the cause.

The application is brought under Sections: 15 and 18 of Cap. 21, Laws of Kenya Order 50 rule 1 of the Civil Procedure Rules, and is supported by an affidavit by Daniel Muiruri Njihia of even date and on the grounds that: the applicant resides in Nairobi and so is the Respondent; the cause of action arose in Nairobi within the jurisdiction of the Nairobi Chief Magistrate's Court at Milimani; the matter ought to have been filed in Nairobi Chief Magistrate's Court at Milimani Commercial Courts instead of Machakos Law Courts.

In opposition, the Respondents aver that the orders sought, if granted, will prejudice the Respondents defence; and that the applicant has admitted that the suit was filed in Machakos court without jurisdiction.

Upon perusal of the Notice of Motion herein and the pleadings by both parties and having considered both the Plaintiff and the Defence, dated 11/3/04 and 25/3/04 respectively, this court Rules that there is no reason, good or otherwise why the application herein should not be granted as prayed.

Section 15 of the Civil Procedure Act, Cap. 21, Laws of Kenya, mandatorily directs where a suit shall be instituted and the guiding criteria to be taken into account in arriving at that decision. These criteria are: the geographical jurisdiction within the local limits where the defendant resides or carries on business or works for gain; or where the cause of action wholly or in part arose. The section also provides for a suit to be instituted in a court other than where the defendant resides or works for gain, if such defendant acquiesces in such institution of the suit.

In the present case, the plaintiff admits that the Defendants offices are situated in Nairobi, and indeed that is where the defendant carries out its business and its Secretary General is housed there. Nairobi, is also for a National and Regional Institution like the Defendant herein, where the alleged contract was entered into and breached, if it existed.

Under the above circumstances, it beats logic how and why the suit was instituted in Machakos, rather than in Nairobi.

That the Plaintiff's counsel operates from Machakos does not change the law on the matter. In any case, as the pleadings show, not that it matters legally, even the Plaintiff himself resides in Nairobi, not Machakos.

That, in my view seems to be the reason for the Respondents rather strong use of the phrase "forum shopping".

Be that as it may, under Section 18 of Cap. 21, Laws of Kenya, this court has the power, at any stage, to transfer any suit, like the one herein.

Accordingly, this court grants the following orders:

- 1. Grants the application herein, and orders that Civil Cause No. 216 of 2004, in the Chief Magistrate's Court, Machakos be transferred to the Chief Magistrate's Court, Milimani Commercial Courts, Nairobi for hearing and disposal.**
- 2. Costs of this application to be in the cause.**

DATED and delivered in Nairobi this 3rd Day of June, 2005.

O.K. MUTUNGI

JUDGE