



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**Misc Civ Appli 240 of 2005**

**P.M. DICK AUCTIONEERS .....APPLICANT**

**VERSUS**

**MARY NJERI NGOME ..... RESPONDENT**

**RULING**

This is an application by the defendant in **KIAMBU SPMCC NO.263 of 2002 MARY NJERI NGOME VS PAUL MUCHIRI DICK T/A P.M. DICK AUCTIONEERS** seeking an transfer of the aforesaid suit from Kiambu Law Courts to a competent Magistrate's court in Nakuru.

The applicant contended that it was filed outside the geographical local limits of the place where the cause of action arose, Naivasha, while the applicant carries out business in Nakuru. He said that owing to the distance, it had become increasingly difficult and expensive to defend himself. The case has been heard and judgment given and execution is in process.

The respondent opposed the application saying that Kiambu Court had jurisdiction to hear and determine the suit and in any event, the defendant submitted to the jurisdiction of the court when he filed his statement of defence and the matter was eventually heard ex-parte and determined. The defendant filed an application to set aside those proceedings but the court dismissed the application with costs.

I have considered all the submissions that were made before this court by the advocates for the parties.

Under Section 3(2) of the Magistrates Courts Act Cap 10, a Resident Magistrate's court has jurisdiction throughout Kenya. That notwithstanding, Section 15 of the Civil Procedure Act requires that every suit be instituted in a court within the local limits of whose jurisdiction the defendant at the commencement of the suit voluntarily resides or carries on business or personally works for gain.

While ordinarily the said case should have been filed in the subordinate court at Nakuru, the court's jurisdiction was not ousted by its filing in Kiambu Senior Principal Magistrate's Court.

It is true that this court has the power to order at any stage, the withdrawal of any suit or proceedings in any court subordinate to it and thereafter transfer the same for trial or disposal to any other subordinate court competent to try or dispose of it, but that power must be exercised reasonably and judiciously. The hearing of the matter has already been finalized at Kiambu Law Courts and execution is underway. It would be improper to order withdrawal of the said case from Kiambu Law Courts to Nakuru Law Courts at this stage in absence of any good reason as to why that ought to be done. The applicant is waking up too late in the day and equity does not aid the indolent. I dismiss the application with costs to the plaintiff.

DATED, SIGNED & DELIVERED AT Nakuru this 29th day of July, 2005.

**D. MUSINGA**

**JUDGE**

**29/7/2005**