

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL MISC. APP. NO. 3 'B' OF 2003

DAVID KILONZO KATIO.....PLAINTIFF
VERSUS
MARRIETA KANINI MUSYOKI.....DEFENDANT

(sued as the legal representative of the Estate
of Charles Musyoki Kikumbi)

R U L I N G

The Plaintiff/Applicant seeks the transfer of Kitui Principal Magistrate's Civil case no. 32/00 from Kitui court to chief Magistrate's court at Machakos. The application was made exparte since the summons in PMCC 32/00 had not yet been served. The reason given for the transfer is because of territorial jurisdiction. In the supporting affidavit of Ithuku Advocate, it is deponed that the cause of action arose along Tawa and Wote Road near Nguluni Market and that both the plaintiffs and defendants reside and work in Machakos District.

Under section 18 Civil Procedure Act this court has power to transfer cases from one court to another for good cause. Section 15 Civil Procedure Act provides that every suit shall be instituted in a court within the local limits where the cause of action wholly or in part arises; where the defendant resides or where the defendant at the time of commencement of the suit resided. We are told that the defendants reside in Machakos. The cause of action also arose within the jurisdiction of chief Magistrate's court Machakos. No reason has been given why the suit was filed in Kitui which had no jurisdiction in the matter. Since Kitui had no jurisdiction to hear that case, it means that there is no case before Kitui court to be transferred to this Chief Magistrate's court at Machakos.

The application for the transfer of the suit is not allowed and is dismissed.

Dated, read and delivered at Machakos this 5th day of February, 2004.

R. WENDOH
JUDGE