



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS APPLICATION NO. 192 OF 2003**

**BEATRICE NJERI MURIUKI.....PLAINTIFF/APPLICANT**

**VERSUS**

**JOSEPH W. NDIRANGU &**

**EPRAIM WAHOME.....DEFENDANT/RESPONDENT**

**R U L I N G**

The appellant seeks to have this court order that SRMCC 515/99 filed at SRMS court Kangundo be transferred to Resident Magistrate's court Murang'a for hearing and disposal. The application is brought under order L Rule 1 CPR, sections 15 (a) and (c); section 18 (b) and section 3A Civil Procedure Act. The applicant also prays that costs be in the cause.

The grounds upon which the application is brought are that the Resident Magistrate's court Murang'a has pecuniary and territorial jurisdiction to hear the case, the witnesses reside and work in Murang'a the cause of action arose along Karatina-Sagana road which is within the local limits of Resident Magistrate's court Murang'a and that it will be easy for the parties to attend and defendant will suffer no prejudice.

The defendant/respondent was not served with the present application as the applicant says that there is already interlocutory judgement entered against the defendants who failed to enter appearance or defence in that case and the application is therefore brought ex parte. They annexed a return of service (PM2) which the court has looked at. Even if the court is not dealing with the case before the lower court, my observation is that 2nd defendant was never served. It is doubtful whether 1st defendant was ever served as the exact mode of service is not indicated, time of service is not indicated nor is the secretary who allegedly pointed out the 2nd defendant identified. It is an observation for the lower court and I will leave it at that.

Going back to the application before me, I will look at the sections under which the application is preferred. Section 15(1)(a) provides that a suit of this nature shall be instituted within the local limits of whose jurisdiction the defendant resides or carries on business or works for gain or where any of the defendants resides works or carry on business or 15(c) where the cause of action wholly or in part arises. In the present case, the 1st defendant is said to reside at Murang'a and so does the 2nd defendant. It is also conceded by applicant and also pleaded at para 5 of the annexed plaint PM(1) that the cause of action which is a road accident occurred on Sagana- Karatina road which is actually within the local limits of Resident Magistrate's court Murang'a. Right from the on set the court with jurisdiction in this matter was Murang'a Resident Magistrate's court. The applicant has not told the court how it came to be that the matter was filed in Kangundo court. Even if it were to be said there was confusion as to which court to go to the other courts that plaintiff would have filed the case in Thika court, Nyeri or Embu. Kangundo Resident Magistrate's court was quite out of the way for the plaintiffs. Section 18(b) gives the High Court wide discretion to transfer suits from one court to another for hearing and disposal. This discretion has however to be exercised judiciously and for good reason.

Kangundo court did not have jurisdiction to entertain the case in the first place no reason has been given why the plaintiff had to go all the way to Kangundo to file their case. There is a reason why we have territorial and local jurisdictions for courts, to avoid congestion and also so that parties will not go shopping for favourable courts in which to file their cases. The issue of jurisdiction goes to the root of the case. If Kangundo court had no jurisdiction to entertain this matter, it follows that there is no suit before

Kangundo court capable of being transferred to Murang'a court. The plaintiff will have to contend with their choice to have the suit filed in Kangundo.

The application has no merit it is dismissed with costs being borne by applicant.

**Dated, read and delivered at Machakos this.....day  
of.....,2004.**

**R. WENDOH**

**JUDGE**