

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. CIVIL SUIT NO. 19 OF 2004

DIYO NYAMAWI DIYO PLAINTIFF

-Versus

KENNEDY RAGIRI ISOE DEFENDANT

R U L I N G

The accident giving rise to Mombasa CMCC No. 3524 of 2003 occurred at Msambweni in Kwale District. The parties to that suit also reside in Kwale District. By a Notice of Motion brought under sections 3A, 15 and 18 of the Civil Procedure Act the plaintiff in that case has applied that the case be transferred to the Senior Resident Magistrate's Court at Kwale for hearing and final disposal. In the supporting affidavit sworn by Mr. Joseph Karanja Kanyi, Counsel for the plaintiff, it is deposed that the suit was filed at Mombasa by mistake of counsel's office.

The application is opposed. Mr. Okongo for the defendant argued that for a case to be transferred from one court to another it must be established that the court in which the case was filed had jurisdiction to hear it. For this proposition he relied on the Ugandan case of **Kagenyi =Vs= Musiramo & Another [1968] E.A. 43**. In this case although the Mombasa Court has pecuniary jurisdiction, he submitted, it does not have the geographical jurisdiction. Contrary to the submissions by Mr. Adoch for the applicant the country wide jurisdiction given to Magistrates by section 3(2) of the Magistrate's Court Act Cap 10 of the Laws of Kenya is merely for administrative purposes to facilitate the transfers of Resident Magistrates without each time publishing their jurisdiction in the Kenya Gazette. Relying on the authority in the case of **Manadu Kitonga =Vs= Salim Nairobi HCC Appeal No. 2 of 1976** Mr. Okongo argued that the Mombasa court has no geographical jurisdiction and the application should therefore be dismissed.

I have considered the rival submissions by counsel for the parties and the authorities cited in particular the **Ugandan case of Kagenyi**. In that case the aspect of jurisdiction in issue was pecuniary which is not the case here. In any case that authority is not binding on me. It is only persuasive. In the case of **Manadu Kitonga** Justice Miller was hearing an appeal from the Resident Magistrate's court at Thika which had dismissed the suit for want of geographical jurisdiction. What we have here is an application for transfer of a suit from one court to another before it is heard.

In the circumstances the two authorities are clearly distinguishable. As the parties and I presume their witnesses reside in Kwale district no prejudice will be caused to the defendant if this case is transferred there for hearing and final disposal. To the contrary it will save the parties great inconvenience and costs if the case is transferred. For these reasons I allow this application but order the plaintiff to pay the costs of the application to the defendant because on his advocate's admission the case was filed in Mombasa by mistake.

DATED this 3rd day of March 2004.

D.K. Maraga

Ag. JUDGE

