



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT VIHIGA**

**MISC. CASE NO. 1 OF 2021**

**(FORMERLY KAKAMEGA ELC MISC. E 18 OF 2021)**

**JAIRO MWASHI KHALAWA.....APPLICANT**

**VERSUS**

**GILBERT VUSENA MWASHI.....RESPONDENT**

**R U L I N G**

Vide Notice of Motion dated 23<sup>rd</sup> June, 2021 the Applicant herein sought transfer of Vihiga SPMC EL CASE NO. 32 OF 2021 from Vihiga SPM's court to Hamisi PM's court for hearing and disposal.

One of the grounds for the Application is that the Defendant had raised an objection in the case to the effect that the court that had territorial jurisdiction is Hamisi PM's court. The other ground is that no prejudice will be suffered by any of the parties if the matter is transferred to Hamisi PM's court within whose jurisdiction the suit property is situate and the Defendant resides.

The application is brought under the provisions of Article 159 of the constitution of Kenya, Section 18, 1A & 1B of the Civil Procedure Act and Order 51 Civil Procedure Rules 2010.

I have read the Notice of Motion, Supporting Affidavit and the Annexure thereto. I have also read the Defence (Reply) filed by the Defendant. I have taken into consideration the oral submissions of the parties.

Section 18 of the Civil Procedure Act empowers this court as a court of equal status with the High Court to withdraw any suit or other proceedings pending in any court subordinate to it and thereafter transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same.

The Defendant opposes the Application for transfer. His main contention as seen in his defence is that counsel for the plaintiff ought to have filed the suit in the correct court before serving him with summons in the case.

The court should at all times act so as to ensure just and timely disposal of proceedings at a cost affordable by the respective parties. The power to transfer cases is one of the mechanisms available for the court to use to ensure the overriding objective as spelt out in Sections 1A and 1B Civil Procedure Act is achieved. In this case since the Defendant resides nearer to Hamisi court than Vihiga Court and the suit land is within the jurisdiction of Hamisi Court it is only fair, just and expedient that the case be tried at Hamisi court. Whatever expense the Defendant may have incurred by reason of the case having been filed at Vihiga Court in the first instance, may be addressed by an award of costs.

Taking all the circumstances of this case into account I make the following orders:

- 1. VIHIGA SPMC EL CASE NO. 32 OF 2021 is hereby withdrawn from Vihiga SPM's court and transferred to Hamisi PM's court for trial and disposal.**
- 2. The matter be mentioned before the PM at Hamisi Court on 20<sup>th</sup> December 2021 for directions.**
- 3. Costs of the Application to the Respondent.**

Orders accordingly.

**RULING READ, SIGNED AND DATED IN OPEN COURT AT VIHIGA THIS 14<sup>th</sup> DAY OF DECEMBER, 2021**

**E. ASATI**

**JUDGE**

In the presence of

Lumallasi for the Applicant

Respondent present in person

Ajevi -Court Assistant.

**E. ASATI**

**JUDGE.**