

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

MISCELLANEOUS CIVIL APPLICATION NO. 39 OF 2020

ERICK MULWO MANYIROR.....1ST APPLICANT

HARON CHEPTOT MULWO.....2ND APPLICANT

VERSUS

WEST KENYA SUGAR COMPANY LTD.....1ST RESPONDENT

JUSTINE WAMALWA KHARINDA.....2ND RESPONDENT

JOHN AYUKO.....3RD RESPONDENT

RULING

1. The application for determination is a Motion, dated 7th August 2020. It seeks transfer of a suit pending at the magistrate's court at Mumias to the Butali magistrate's court, saying that the suit was erroneously filed at Mumias. The suit is Mumias PMCCC No. 197 of 2018. The accident is said to have occurred along the Kitale-Webuye road, and it is said that that is within the geographical limits of the Butali law courts. The defendant is said to do business at the Butali market.

2. The application is opposed. It is argued that the traffic accident the basis for the suit happened within the local limits of the Kimilili law courts, and that that was the court with jurisdiction. It is argued that the applicants say that the defendant does business at Butali, yet it is not identified which of the 3 defendants they refer to. It is pointed out that there are other suits arising from the same accident that are pending at the Kimilili court, and copies of their pleadings have been attached. It is further argued that the application for transfer is a reaction to an application that the respondents have filed in the Mumias suit where the issue of jurisdiction has been raised.

3. I note that the applicants have not attached any pleadings to their application, so that I cannot even tell whether the suit they refer to exists, and to assess whether or not there was the error that they allude to. Thankfully the respondents have been more elaborative, and have salvaged the situation

4. Both sides have filed written submissions, and cited authority. It is clear that the accident occurred within Bungoma County, and it is courts within that County that ought to have jurisdiction. The key witnesses ought to be there, being any eyewitnesses, and so is the police station that is seized of the investigation into the accident, as well as the medical institutions where the victims of the accident might have received the first line of treatment.

5. Anyway, the issue of jurisdiction only appears limited to the territorial or geographical limits of the trial court. It does not go to the core or heart of the matter. I do not believe that that would make the suit incompetent. It would still be transferable to the court with territorial jurisdiction. I am persuaded to order the transfer, but not to Butali, but rather to Kimilili.

6. The final order is that the suit, in Mumias PMCCC No. 197 of 2018, is, by this order, withdrawn from the Mumias law courts, and shall be transferred to the Kimilili magistrate's court, for hearing and disposal. The respondents shall have the costs of the application.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 17TH DAY OF SEPTEMBER, 2021

W. MUSYOKA

JUDGE