



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC. APPL. NO. 508 OF 2019

MASTER GM (Suing thro' his

Mother and next friend JM).....APPLICANT

VERSUS

DR. DONALD OYATSI.....1ST RESPONDENT

DR. THOMAS NGWIRI.....2ND RESPONDENT

GERTRUDES CHILDRENS HOSPITAL.....3RD RESPONDENT

UHAI NEEMA HOSPITAL.....THIRD PARTY/RESPONDENT

RULING

1. The application dated 15th July, 2019 seeks orders **that this honourable court be pleased to grant leave to issue an order transferring CMCC No.3469 of 2018 between (Master GK a minor suing through JM mother and next friend) and Dr. Donald Oyatsi, Dr. Thomas Ngwiri, Getrudes Children Hospital and Uhai Neema Hospital at Milimani Commercial Courts to the High Court.**

2. It is stated in the grounds and the affidavit in support that the award of damages anticipated herein is beyond the pecuniary jurisdiction of the Chief Magistrate's Court. It is averred that the minor herein suffered permanent brain damage and requires nursing and medical care for life.

3. The 1st Respondent and the Third Party are not objected to the application.

4. The application was opposed by the 2nd and 3rd Respondents as per the grounds of opposition dated 12th November, 2019. The said grounds are as follows:

1. The application is misconceived, frivolous, vexatious, an afterthought after the fact and as such an abuse of the court process.

2. The application is incurably defective, incompetent, misplaced and lacking in merits.

3. The application has no substratum.

4. Milimani CMCC No. 3469 of 2018, was filed without jurisdiction, and the fatal defect cannot be cured by having the fatally defective suit transferred.

5. The original suit was filed without jurisdiction and was fatally defective ab initio. The defect cannot be cured after the fact. Jurisdiction is everything.

6. The Plaintiff/Applicant has come to court with unclean hands.

5. The copy of the plaint exhibited herein reflects the particulars of the injuries sustained by the minor as follows:

“- Development of sepsis and gangrene over the left lower limb.

Shock with permanent and irreversible brain injury.

Amputation of the left lower limb (below knee)”

There’s a possibility that depending on the nature of the evidence adduced, the award can go beyond the pecuniary jurisdiction of the Chief Magistrate’s Court.

6. The High Court has powers to withdraw and transfer a case instituted in the lower court. Section 18(1)(b) (i) of the Civil Procedure Act provides as follows:

“18. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage -

(b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter -

(i) try or dispose of the same....”

7. With the foregoing, this court finds merits in the application. The application is hereby allowed with costs in cause.

Date, signed and delivered at Nairobi this 6th day of May, 2020

B. THURANIRA JADEN

JUDGE