

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 334 OF 2015

ANNET NALUGWAPLAINTIFF/APPLICANT

VERSUS

MADISON INSURANCE COMPANY LIMITED.....1ST DEFENANT/RESPONDENT

JOAB GUYA NDONGA2ND DEFENDANT/RESPONDENT

RULING

This is an application by way of Notice of Motion dated 28th July, 2018 seeking an order that this case be transferred from the High Court Nairobi to the Chief Magistrate’s Court at Homabay. It is brought under Sections 3A, 14, 18 and 63 (e) of the Civil Procedure Act and supported by an affidavit sworn by the advocate for the plaintiff.

The application is opposed and grounds of opposition have been filed on behalf of the 1st defendant alongside an affidavit sworn by the legal manager of the 1st defendant. The reasons given therefor are that the cause of action arose in Homabay where the plaintiff resides and so does the 2nd defendant. It is further stated that the Chief Magistrate’s Court in Homabay has territorial jurisdiction to hear and determine the matter. Counsel for the parties herein have filed submissions which I have read.

This court has jurisdiction under Section 18 of the Civil Procedure Act to grant the orders sought by the plaintiff. I have considered the rival submissions of the parties herein. Ordinarily a suit is not filed at the convenience of the plaintiff but that of the defendant. It has not been contested that the advocates for the parties reside and practice in Nairobi. There is also not a very serious contest that the 1st defendant has its headquarters in Nairobi. It is also not disputed that the court in Nairobi has jurisdiction to deal with the matter.

In considering whether or not to transfer a suit the court has a duty to consider the principles of justice, convenience and fairness to the parties. – see **Lewis Nyakundi vs. United Touring Company (K) Limited (2204) e KLR, Benard Onkundi Otungo & 5 Others vs. Creek Marketing & Development Limited (2017) e KLR and Sustainable Management Services vs. New Mitaboni F.C.S. (2017) e KLR.** Underlying all these is the subject of costs that comes into play at the conclusion of the hearing.

The applicant has not demonstrated to the satisfaction of this court what prejudice she will suffer if the suit remains in Nairobi. I must observe that it was at the instance of the plaintiff that this case was filed in Nairobi. I hasten to add that the case is ready for hearing and any other application is likely to delay the matter further.

It is instructive that Sections 1A and 1B of the Civil Procedure Act have been left out of the cited provisions of law in this application. Whether this was inadvertent is hard to say, but it is the duty of the court to observe that the overriding objective is to facilitate the just, expeditious, proportionate and or affordable resolution of civil disputes under the Act. In so doing, it is the duty of the court to invoke those objectives and it will not be in the interest of justice to transfer a case that is ready for hearing as in this particular case. I see no justification whatsoever to allow the application which is hereby dismissed with costs to the defendants.

Dated, signed and delivered at Nairobi this 4th Day of April, 2019.

A. MBOGHOLI MSAGHA

JUDGE