

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL MISC APPL. NO. 352 OF 2018

VICTOR OGUTU ARNOLD.....APPLICANT

VERSUS

DAVID K. CHERUIYOT.....RESPONDENT

RULING

1. The application dated 18th June, 2018 seeks orders that the honourable court be pleased to transfer Milimani CMCC No. 514 of 2013 to the Sotik Magistrate's Court for hearing and final determination.

2. According to the grounds and the affidavit in support of the application, the Senior Resident Magistrate's Court Milimani in an application for the striking out of the defence ruled that it lacked territorial jurisdiction to determine the suit herein.

3. In response, the Respondent filed the Preliminary Objection dated 12th July, 2018 on the grounds that:

1. The honourable court lacks jurisdiction to transfer a suit filed in court not seized with jurisdiction to handle.

2. The application is incompetent and bad in law.

4. Both the application and the Preliminary Objection were argued simultaneously by way of written submissions. I have considered the said submissions.

5. It's not contested that the suit herein was filed at Milimani Commercial Courts, Nairobi and that the lower court has held that the suit ought to have been filed at Sotik law courts. The question is whether this court has the requisite jurisdiction to transfer the same.

6. This court is empowered under Section 18 of the Civil Procedure Act to transfer suits on application by the parties or on it's own motion in accordance with the said provision.

7. Under Section 14 & 15 of the Civil Procedure Act, a suit for compensation or for wrong done to the person or to moveable property may be filed within the territorial jurisdiction of the court where the cause of action arose or where the Defendant(s) resides or works.

8. In the case at hand, it is pleaded that both the Plaintiff and the Defendant reside in Nairobi. There are no details pleaded regarding where the contract the subject of the suit was entered into or where the performance thereof was to take place nor where the payment was to take place. Based on the pleadings, it cannot be conclusively stated that the suit was filed in a court without jurisdiction.

9. With the foregoing, the Preliminary Objection dated 12th July, 2018 is hereby dismissed. Consequently, I allow the application. The suit is hereby transferred to Sotik Magistrate's Court. Costs in cause.

Dated, signed and delivered in Nairobi this 8th day of April, 2019

B. THURANIRA JADEN

JUDGE