



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO. 507 OF 2019

KMWT (A minor suing through BKT-Father and next friend).....PLAINTIFF/APPLICANT

-VERSUS-

THE NAIROBI HOSPITAL.....1ST DEFENDANT/RESPONDENT

DR. JOY MPAATA.....2ND DEFENDANT

RULING

1. The plaintiff/applicant took out the Notice of Motion dated 15th July, 2019 supported by the grounds laid out on its face and the facts deponed in the affidavit sworn by the applicant. The orders being sought therein are:

i. THAT this Honourable Court be pleased to grant leave to issue an order transferring CMCC NO. 1117 OF 2016 (KMWT (A Minor suing through BKT-father and next friend)-vs-the Nairobi Hospital and Dr. Joy Mpaata) to the High Court.

ii. THAT the costs be in the cause.

2. The 1st defendant/respondent filed the replying affidavit sworn of Maxwell Maina Mwangi, it's Legal Officer to oppose the motion.
3. On her part, the 2nd defendant/respondent did not file any response to the Motion nor participated in the interpartes hearing of thereof.
4. Prof. Wangai learned advocate for the applicant argued that the damages being sought in the plaint may exceed Kshs.20,000,000/= hence the trial court may not have jurisdiction to make such an award.
5. In reply, Mr. Tugei learned advocate for the 1st respondent relied on the facts deponed in the replying affidavit. He argued that the applicant has made no amendment to the plaint to include other prayers in addition to those currently being sought so as to warrant a granting of the order for transfer of the suit.
6. I have taken into consideration the grounds set out on the face of the Motion, the facts deponed in the affidavits filed in support and against the Motion, plus the rival oral submissions.
7. The applicant is heavily relying on the fact that according to the medical report dated 16th July, 2016 prepared by Dr. Donald Oyatsi, his daughter suffered hyoxic brain injury which attracts an award of more than ksh.20,000/=.
8. In contrast, Maxwell Maina Mwangi in his affidavit he averred that no evidence has been adduced to show that the costs of nursing and medical care plus any damages that may be awarded will exceed the pecuniary jurisdiction of the subordinate court.
9. The deponent further asserts that in any case, the suit had initially been filed in the High Court vide HCCC No. 358 of 2013 but by consent of the parties, the same was transferred to the subordinate court on 23rd February, 2016 and was scheduled to come up for hearing on various dates but did not proceed for one reason or another.
10. I have looked at a copy of the plaint dated 30th August, 2013 filed in HCCC No. 358 of 2013, and been annexed to the replying affidavit. The plaint discloses that the claim against the defendants is of a medical negligence nature. The reliefs being sought therein include general and special damages which were yet to be ascertained, as well as costs of the suit and interest thereon.
11. The applicant has not offered sufficient evidence to support his claim that the damages being sought will likely exceed the pecuniary jurisdiction of the subordinate court.

12. In the end, the motion is found to be without merit. It is dismissed with costs abiding the outcome of the suit.

Dated, Signed and Delivered at Nairobi this 13th day of November, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

..... for the 1st Defendant/Respondent

..... for the 2nd Defendant