



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

MISC APPLICATION NO. 4 OF 2018

ANN NYAKIRU WAWERU MUINDE.....PLAINTIFF

VERSUS

EUNICE WAMBUGU.....1ST DEFENDANT

KADU TITL.....2ND DEFENDANT

RULING

By an application dated 13th November, 2017 the applicant seeks two substantive orders:

(1) That the suit referred us involving the parties to this application be transferred from Kajiado Chief Magistrates Court to Ngong Law Courts.

(2) That the costs of this application be provided for:

The application is brought under Section 18(1), (b) (1) and Section 2 of the Civil Procedure Act. It is supported by the annexed affidavit of Susan Murage and mainly on grounds that:

(a) The key witnesses reside in Ngong

(b) The said witness – Elizabeth Waweru is elderly and therefore vulnerable due to her challenging health.

(c) That the distance to Kajiado will likely delay the determination of the suit.

The application was served upon the defendant but this court received no response by the defendant/respondent. The application was therefore presented as undefended motion.

The Law:

Section 18 of the Civil Procedure Act provides for the power of the High Court to transfer suits where applicable from one subordinate court to any other competent to try or dispose of the same. The jurisdiction can be invoked by any of the parties to the dispute or *suo moto* by the court itself.

Under Section 1A and 1B of the Act on overriding objectives the duty of the court shall be guided by the following acts:

(a) The just determination of the proceedings

(b) The efficient disposal of the business of the court.

(c) The efficient use of the available judicial and administrative resources.

(d) The timely disposal of the proceedings and all other proceedings in the court, at a cost affordable by the respective parties.

In the case of *George Mwangela Mwenda v Loise Gakii Misc. Application No. 70 of 2015* the High Court held that

“A superior court has the power to transfer cases from one subordinate court to another for hearing and disposal. The court went on to hold that the power served an important purpose in law to attain the ends of and facilitate access to justice, that is why the court could invoke and exercise the power Suo moto”

The necessity for transfer of a case as seen from the Civil Procedure Act and case law may arise purely on grounds of jurisdiction on in the ends of justice.

After looking at all the circumstances and facts of the application this court finds the merits to have this case transferred to Ngong Court. **Secondly**, for such a transfer it would meet the ends of justice, and towards expeditious and timely delivery of justice for both parties.

The upshot of all this is that the chamber summons dated 13th November, 2017 is hereby allowed.

Dated, signed and delivered in open court at Kajiado this 5th day of March 2018.

R. NYAKUNDI

JUDGE

In the presence of:

Namanjo for Mwaura for the applicant

The respondent not in attendance.