



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISC. APPLICATION NO. 1 OF 2017

JOHN KARIUKI NJOKA.....PLAINTIFF

VERSUS

SECRETARY BOARD OF GOVERNOR.....1ST RESPONDENT

CHAIRMAN BOG.....2ND RESPONDENT

R U L I N G

1. This is an application dated 9/01/2017 seeking for orders for transfer of Embu CMCC No. 58/2016 to Nyeri Industrial Court for hearing and determination.
2. It is supported by the affidavit of the applicant John Kariuki Njoka who states that the matter falls within the jurisdiction of the Industrial Court and that he filed the matter in the Chief Magistrate's court for lack of knowledge.
3. It is further stated that the matter is fresh and that this court has the mandate to transfer the same to the right court.
4. The application was opposed by the respondent in his grounds of opposition dated 28/03/2017. It is argued that the application is misplaced, improper, strange and is clearly wrong and that the inherent jurisdiction in this court under Section 3A of the Civil Procedure Act is wrongly cited. The respondent states that the suit is incompetent and that this court cannot rightly transfer the same.
5. The power to transfer suits is donated to the High Court by virtue of Section 18 of the Civil Procedure Act which provides that:-
 - (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 –
 - (a) Transfer any suit, appeal or other proceedings pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (b) Withdraw any suit or other proceedings pending in any court subordinate to it, and thereafter –
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (iii) re-transfer the same for trial or disposal to the court from which it was withdrawn.
6. The provision does not empower the High Court to withdraw and transfer a case from the subordinate court to the Employment and Labour Relations Court (formerly known as Industrial Court) or to any court of equal status. Both parties are in agreement that the dispute falls under the Employment and Labour Relations Court. For this reason the Chief Magistrate's court and this court have no jurisdiction to hear and determine the dispute. It therefore follows that neither the High Court nor the Chief Magistrate's court has the mandate to withdraw and transfer the said suit.
7. This application falls outside the ambit of Section 18 of the Act. I reach a conclusion that this court has no jurisdiction to grant the orders sought. The right thing for the applicant to do is to withdraw the suit in the magistrate's court and file a fresh suit in a court of competent jurisdiction.

8. I find that the application lacks merit and it is hereby dismissed with costs.

DATED, DELIVERED AND SIGNED AT EMBU THIS 3RD DAY OF MAY, 2017.

F. MUCHEMI

JUDGE

In the presence of:-

- 1. Applicant present in person**
- 2. Mr. Guantai for Mr. Ithiga for respondents**