



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

CIVIL MISC. APPLICATION NO. 18 OF 2018

ELIZABETH KAPOLI alias KARSIS ENE ESHO.....PLAINTIFF

VERSUS

HEKIMA PLACE TRUST.....DEFENDANT

RULING

This is a notice of motion filed by the applicant pursuant to order 51 of the Civil Procedure Act, Section 18(1) (2) and Section 3A of the Civil Procedure Act. The applicant did specify in the application that she seeks the court to invoke Section 18 of the civil procedure Act to order for a transfer of Kajiado CMCC 346 of 2015 to Ngong Chief Magistrate court for trial and disposal.

In the supporting affidavit legal Counsel Ms. Jean Nyoro has deposed that she is seized of the matter. That the nature of the claim between the parties is for recovery of general and special damages arising out of a road traffic accident that occurred on 7th March, 2014 while the plaintiff was travelling in motor vehicle registration No. KAM 461Z along Bondeni – Ngong Road near Ngong town. That the cause of action is therefore within the jurisdiction of Ngong Chief Magistrate Court. The respondent was served but failed to enter appearance or file a replying affidavit.

The Law

Under Section 17 and 18 of the Civil Procedure Act the High Court has been clothed with the jurisdiction to transfer any suit instituted in a specific subordinate court to another for purposes of adjudication and disposal. From the provisions of Section 17 and 18 the power to transfer suits by the High Court may either be exercised *suo moto* or through an application by either of the parties to a claim.

The exercise of the power under Section 17 and 18 of the Act on transfer of suits is discretionary whose mechanism is to provide the litigants access to justice through a forum which in time, locality and proximity is closer to them.

I consider the process of case adjudication before court of law or tribunal ought to espouse constitutional principles on expeditious and speedy trial. The attainment of this constitutional dictate is sometimes impaired by the distance citizens have to travel to and fro to access court. The significant part of it is the cost incurred to avail the key actors like witnesses in the administration of justice. The benefit of establishing courts up to the ward level in our devolved units cannot be therefore overemphasized.

Whether the transfer of suit is *suo moto* or by way of an application there are certain key principles which must guide the court in exercise of its discretion. This is clearly illustrated by Dr. Steve Ouma in his book on commentary on the Civil Procedure Act second Edition at Page 49 on transfer of cases by the High Court where he states as follows on the guiding principles:

- (a) That the expenses and difficulties of the trial would be so great as to lead to injustice**
- (b) The case has been filed in a particular court for the purpose of occasioning injustice.**
- (c) That it is necessary to transfer generally for the purpose of convenience**
- (d) That there are pecuniary or other personal interests in the presiding Judge**
- (e) There is a reasonable apprehension by the litigant that he will not get a fair trial.**

In the instant case the applicant has alleged that the cause of action arose within the jurisdiction of Ngong Magistrate Court. From the record

the case pending before Kajiado Magistrate Court is yet to be heard and determined. The basis lies that the transfer will accord the witnesses easier access and save time with regard to the distance they have to travel all the way to Kajiado Court. It is important to bear in mind that the stated purpose of Section 18 of the civil procedure Act is to promote and further access to justice.

I agree with the applicants counsel that this is a fit case for the court to invoke its jurisdiction under Section 18 of the Civil Procedure Act to have it transferred from Kajiado Chief Magistrate court to Ngong Court forthwith. I allow the transfer with a corresponding order that CMCC 346 of 2015 currently filed at Kajiado Magistrate Court Registry be transferred to the Chief Magistrate Court Ngong for hearing and disposal.

I make no orders as to costs.

Dated, Signed and delivered in open court at Kajiado this 13th day of July, 2018.

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R. NYAKUNDI

JUDGE

In the presence of:

Mr. Kimeru holding brief for the applicant

The respondent was not represented.