



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT EMBU**

**MISC. CIVIL APPLICATION NO. 85 OF 2017**

**KENNETH KABURI KABABI.....PLAINTIFF/APPLICANT**

**V E R S U S**

**HON. ATTORNEY GENERAL.....1ST DEFENDANT/RESPONDENT**

**THE COMMISSIONER OF POLICE.....2ND DEFENDANT/RESPONDENT**

**WILSON MUNYINYI MACHARIA.....3RD DEFENDANT/RESPONDENT**

**CORPORAL PIUS TAMA.....4TH DEFENDANT/RESPONDENT**

**R U L I N G**

1. This is a ruling on an application dated 21/08/2017 seeking for orders for transfer of CMCC No. 7 of 2008 to Kerugoya CM Court. It is supported by the affidavit of the applicant and other grounds contained on the face of the application.
2. It is deposed that the cause of action took place in Kerugoya and parties come from there. At the time the suit was filed there was no magistrate with jurisdiction to hear the case at Kerugoya, the highest rank being that of Senior Resident Magistrate. The applicant states that Kerugoya Court now has a chief magistrate and are desirous that the suit be heard there.
3. It is further argued that the chief magistrate lacks territorial jurisdiction to hear the case for the cause of action arose at Kerugoya. The applicant further contends that no prejudice will be caused to the parties because they all come from Kerugoya.
4. The 3<sup>rd</sup> respondent in his replying affidavit opposed the application on grounds that the suit lacked territorial jurisdiction at the time of filing and that he has already filed a preliminary objection which is yet to be heard and determined. This is consistent with his amended defence that the suit is *void ab initio*.
5. It was further argued that in the event that the orders for transfer are granted, the objective of the preliminary objection will be defeated. The 3<sup>rd</sup> respondent contends that the suit is fatally defective and it is imperative that the preliminary objection be heard first instead of transferring a void suit.
6. As for the application, the 3<sup>rd</sup> respondent refers to it as vexatious and frivolous and prays that it be dismissed.
7. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents were represented by Mrs. Njoroge of the 1<sup>st</sup> defendant's office. The respondents in their grounds of opposition stated that the application is bad in law and an abuse of the due process of the court.
8. However, the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> defendants were of the view that this suit be heard in Embu Court where the 1<sup>st</sup> defendant has an office. It was also stated that the 1<sup>st</sup> defendant has no cases in Kerugoya but has several in Embu. It will therefore be convenient for the 1<sup>st</sup> defendant to conduct his defence in Embu.
9. The application was argued orally in court and parties supported their arguments in their oral submissions. Mrs. Njoroge for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents contended that the Embu Chief Magistrate's court has jurisdiction because the 1<sup>st</sup> defendant is stationed in Embu. In compliance with Section 14 of the Civil Procedure Act, it was further argued that the suit may be filed where the defendants reside. The counsel further stated that it is only the plaintiff who resides in Kerugoya which was not denied.
10. This is a suit for compensation of wrong done to a person and that Section 14 is applicable.

11. Section 14 of the Civil Procedure Act is the applicable law herein and it provides:-

*Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of those courts.*

12. Depending on the circumstances of the case, the applicant/plaintiff had an option to sue either in Kerugoya where the wrong against him was allegedly done or where one or more of the defendants resides.

13. The explanation given by the applicant explains that at the time of filing the suit, there was no magistrate in Keurgoya possessed of the pecuniary jurisdiction to hear and determine the matter. This was disputed by the counsel for the 3<sup>rd</sup> respondent.

14. However, the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents prefer the case being heard in Embu since it is still in compliance with Section 14 of the Act. The 3<sup>rd</sup> defendant is of the same opinion. The issue whether there was a magistrate with pecuniary jurisdiction to hear the case in Kerugoya at the time of filing is not material to this application.

15. The concern of the court is whether the law as stipulated under Section 14 and 15 was complied with. The court also requires to consider whether any of the parties will be inconvenienced if the suit is heard in Embu or Kerugoya. This is in terms of cost of traveling and other expenses.

16. In my considered opinion that this suit, by being filed in Embu complied with the law because one or more of the defendants is located or stationed in Embu. Generally, all the defendants have no problem in the case remaining in Embu Chief Magistrate's Court. This may be interpreted to mean that none of them will be inconvenienced in any way should the case remain where it is.

17. I take judicial notice that the distance between Kerugoya and Embu is slightly over thirty (30) kilometres. The applicant would not be inconvenienced in case he has to travel to Embu for hearing of the case.

18. I have perused the supporting affidavit. It does not say that the applicant will be inconvenienced in any way should the case be heard in Embu. The only reason given for transfer is that the court now has a magistrate possessed of the pecuniary jurisdiction required.

19. The 3<sup>rd</sup> defendant said he has a preliminary objection to raise on the competence of the suit as per paragraph 5 of the defence. The said objection is yet to be raised. In my considered view, this is not a sound reason for keeping the suit in Embu if the court was of the opinion that the application for transfer is merited.

20. I am convinced that the suit complies with Section 14 of the Act and no satisfactory reasons for transfer have been given.

21. It is my finding that the applicant has not established a case for transfer of the suit from Embu to Kerugoya.

22. I find that the application lacks merit and I dismiss it accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 4TH DAY OF JULY, 2018.**

**F. MUCHEMI**

**JUDGE**

**In the presence of:-**

**Ms. Kimotho for 3<sup>rd</sup> Defendant/Respondent**

**Ms. Ngige for Fatuma for Plaintiff/Applicant**

**Mr. Siro for 1<sup>st</sup> Defendant/Respondent**