



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCC NO. 3 OF 2018

MUEMA NDUNGI.....PLAINTIFF

VERSUS

KENYA ALLIANCE INSURANCE CO. LTD.....DEFENDANT

RULING

INTRODUCTION

1. By a Notice of Motion dated 05/06/2018, the Applicant prays for the transfer of the instant suit to commercial and Admiralty Division of High Court Nairobi on grounds stated in the motion namely:-

- i. *The cause of action herein is based on a Contract of Insurance which contract was entered into between the parties at Nairobi.*
- ii. *The cause of action arose at Nairobi within the geographical jurisdiction of the High court, Commercial & Admiralty Division at Nairobi.*
- iii. *At paragraph 18 of the plaint, the Plaintiff actually pleads and confirms that the cause of action arose at Nairobi.*
- iv. *The Defendant's principal office where the contract was made is based at Nairobi and it has no branch office in Makueni.*
- v. *The complaint lodged by the Plaintiff against the Defendant with the Insurance Regulatory Authority was lodged and heard at the Authority's offices in Nairobi.*
- vi. *The parties are represented by advocates whose offices are in Nairobi and the listed witnesses for the Defendant are also resident at Nairobi and Athi River.*
- vii. *It is an abuse of the process of this court for the Plaintiff to admittedly plead and assert that the cause of action arose at Nairobi and proceed to lodge this suit in this court in violation of Section 15 of the Civil Procedure Act.*
- viii. *This court is enjoined to give effect to the overriding objective of the Civil Procedure Act which predicates a duty to ensure a just, expeditious, proportionate and affordable resolution of disputes before it and handle all matters before it with aim of achieving inter alia the timely disposal of proceedings before the court at a cost affordable to the parties.*
- ix. *No party shall be prejudiced if this suit is transferred as prayed and the circumstances of this matter appeal to this court to order the transfer sought.*
- x. *The orders sought herein are fair and meet in the totality of all material circumstances and it is only in the interests of justice and all fairness that this Honourable court grants the same as sought.*

2. The application is supported by the affidavit of Anthony Kariuki sworn on 05/06/2018.

3. The same reiterates the content of the grounds stated above.

4. The matter came for hearing on 25/07/2018, and by then, Respondent had not lodged a Replying Affidavit.

5. The court ordered replying affidavit be filed within seven days and served by this date of preparation of the ruling. That is 11/08/2018, same had not been filed. This court will proceed with ruling as if notice of motion is un- opposed.
6. On merit, the plaint filed herein gives the Defendant/ Applicant address of service to be Chester House, P.O. Box 30170-00100, Nairobi.
7. The policy subject matter herein was issued by Applicant in Nairobi vide paragraph 5 of the plaint.
8. The loss of motor vehicle which triggered the instant course of action occurred in Athi River.
9. It is only the Plaintiff/Respondent who via his statement filed on 05/04/2018 who states that he resides in Makueni, thus assumed that he could lodge instant suit in Makueni.
10. The contract allegedly breached was entered in Nairobi. Thus the court has to look at provisions of Civil Procedures Rules.
11. **Order 47, rule 6.] Place of trial. 6. (1)** states that;

“Every suit whether instituted in the Central Office or in a District Registry of the High Court shall be tried in such place as the court may direct; and in the absence of any such direction a suit instituted in the Central Office shall be tried by the High Court sitting in the area of such Central Office and a suit instituted in a District Registry shall be tried by the High Court sitting in the area of such District Registry.

(2) The court may of its own motion or on the application of any party to a suit and for cause shown order that a case be tried in a particular place to be appointed by the court:

Provided always that in appointing such particular place for trial the court shall have regard to the convenience of the parties and of their witnesses and to the date on which such trial is to take place, and all the other circumstances of the case.”

12. The aforesaid provisions favor the grant of the orders sought as the alleged of contract took in Nairobi and Applicant resides in Nairobi.
13. Thus the court grants the notice of motion as prayed.

SIGNED, DATED AND DELIVERED THIS 17TH DAY OF OCTOBER 2018 IN OPEN COURT.

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C.KARIUKI

JUDGE