



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISC. APPLICATION NO. 1 OF 2018

MUCHIRA MUGO.....APPLICANT

VERSUS

JANE KARIITHI.....RESPONDENT

RULING

The applicant Muchira Mugo has filed an application dated 02/02/2018 seeking that **Wang’uru Arbitration Cause No. 34 of 2006** be transferred to Kerugoya Chief Magistrate’s Court.

The grounds are that the applicant’s health is deteriorating and due to poor health he cannot be able to travel to Wang’uru to pursue the case. That he lives near Kerugoya town therefore he can comfortably pursue the case while in Kerugoya Chief Magistrate’s Court. That the arbitration cause is already finalized in his favour and afterwards the defendant died before execution of the decree. The applicant claims that his eye sight is dwindling and will need to get a person to bring him to court. He attached a booking sheet from Kikuyu Eye Unit for operation scheduled for 15/01/2018.

There is no replying affidavit in the file but during hearing, the respondent stated that the court with jurisdiction is Wang’uru where the land is situated and the transfer will create a backlog. That it is only execution which is pending. In addition, that the deceased has not been substituted and the respondent has not filed any letters of administration therefore she has no locus.

Issues arising;

1. Transfer of suit

Section 18(1) (b) of the Civil Procedure Act provides:

“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—withdraw any suit or other proceeding 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- iii) retransfer the same for trial or disposal to the court from which it was withdrawn.”***

In **Aberdare Investments v Bernard Wachira & 5 others [2014] eKLR**

The Court held;

“It is clear from those provisions that the court with jurisdiction to transfer a suit from or to a subordinate court is the High Court, or courts of similar status.”

This court has jurisdiction under **Section 18(1)(b)(ii) of the Civil Procedure Act** to transfer the suit from Wang’uru to Kerugoya. The second issue is whether the court should order the transfer of the case. The court has discretion to order the transfer of the case. The case has been in Wang’uru Court for a long time. The case has been finalized and only execution is remaining. There is nothing to transfer. The applicant will not be required to be attending court. It is also submitted that the respondent in the matter is deceased and has not been substituted. The person joined as respondent has no locus as she has not obtained any letters of administration in the estate of the deceased

respondent. She is wrongly joined.

Though the court has jurisdiction to transfer the suit, it must not do so in vain. The matter sought to be transferred has been finalized and a decree **annexture MMI** was issued way back on 14/2/07. There is therefore no suit or proceedings pending and there is nothing to be transferred to the Chief Magistrate's Court Kerugoya for determination. I decline to allow the application. It is dismissed with costs.

Dated at Kerugoya this 1ST day of November 2018.

L. W. GITARI

JUDGE