



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

MISC.APP. 291 OF 2016

MARY MUENI MUTISYA alias

MARY MUTISYAPLAINTIFF/APPLICANT

VERSUS

YUDICK MREMU.....^{1ST} DEFENDANT/RESPONDENT

LAMACK AMON^{2ND} DEFENDANT/RESPONDENT

RULING OF THE COURT

1. THE APPLICATION:

The Plaintiff/Applicant has filed a Notice of Motion dated 4th November, 2016 expressed to be brought under the provision of Section 11, 18, 1A, AB, 3A of the civil Procedure Act, Order 51 Rule 1 of Civil Procedure Rules and all enabling provisions of the law.

The Application seeks for the following orders namely:-

(1) THAT, this Honourable court be pleased to transfer Machakos Chief Magistrate's Court Civil Suit No.531 of 2012 lodged at Machakos Law Courts to Mavoko Law Courts for hearing and disposal.

(2) THAT, costs of this application be provided for.

The Application is based on the following grounds and on the grounds deponed to the annexed Affidavit of MARY MUENI MUTIYSA alias MARY MUTISYA namely:-

(i) THAT the accident which is the subject matter of the suit/claim occurred within Kitengela Area.

(ii) THAT, the Senior Principal Magistrate's Court at Mavoko has both pecuniary and geographical jurisdiction to hear and determine this matter.

(iii) THAT, at the time of filing his suit, Mavoko Law Courts had not yet been established.

(iv) THAT, the hearing of this matter has never taken off, the same is therefore a fresh matter.

(v) THAT, the transfer will expedite hearing and determination of this suit.

(vi) THAT, the Defendants/Respondents shall suffer no prejudice if the matter is transferred to Mavoko Law Courts.

(vii) THAT, it is in the interest of justice to grant the orders sought.

2. The Applicants' case is that she had been a victim of a road traffic accident involving the Defendants M/Vehicle registration Number T 573 BHL that took place along Kitengela – Isinya road, that at the time of filing a suit at the Machakos Chief Magistrate's Court Mavoko Law courts had not been established, that the suit ought to have been filed at the Mavoko Law Courts which has both geographical and pecuniary jurisdiction to hear and determine the matter, that in order to efficiently expedite the matter. The suit ought to be transferred to Mavoko Law Courts that, matter is still fresh and it will be in the interest of justice to transfer suit as the Respondents shall suffer no prejudice.

3. The Application has not been opposed by the Defendants/Respondents who have failed to file grounds of opposition or replying Affidavits.

4. Determination:

The issue that this court has to determine is whether or not the Applicant has presented sufficient reasons to warrant transfer of suit from Machakos Chief Magistrate's Court to Mavoko Senior Principal Magistrate's and further whether the Defendants stand to be prejudiced by the said transfer. Indeed the power of this court to transfer cases instituted in subordinate courts is contained in the provision of Section 18 (1) and (2) of the Civil Procedure Act which provides as follows:-

18 (1) On the Application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice the High Court may at any stage:

(a) Transfer any suit or other proceedings pending before it for trial or disposal to any 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,

(ii) Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same,

(iii) Transfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceedings has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may subject to any special directions in the case of an order of transfer, either to retry it or proceed from the point at which it was transferred or withdrawn.

Also Section 15 of the Civil procedure Act provides that suit should be instituted in the place where the cause of action arose or where the Defendant resides or carries on businesses.

The Applicant has laid down a basis upon which she seeks to have this suit now before Machakos CM's Court transferred to Mavoko Law Courts and the grounds advanced include cause of action arose within the jurisdiction of the court, most of the witnesses reside within Kitengela area and that the Defendants will suffer no prejudice. The principles upon which this court will exercise its discretion as regards the transfer of cases have been well laid down in the Ugandan case of DAVID KABUNGU =VS= ZIKARENGA & 4 OTHERS KAMPALA HCCS NO. 36 OF 1995 (unreported) in which Okello J stated as follows:-

“Section 18(1) of the Civil Procedure Act gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even *suo moto* by the court without application by any party. The burden lies on the Applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice or the suit has been filed in a particular court for the purposes of working injustice. What the court has to consider is whether the Applicant has made a case to justify it in closing doors of the court on which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction It is a well established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are balance of convenience, questions of expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication must be refused. Want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court from which transfer is sought has no jurisdiction to try the case, transfer could be refused.....”

Looking at the Plaintiff’s Application and the supporting Grounds as well, as the Affidavit, I am satisfied that she has satisfied the conditions for an order of transfer of the suit from Machakos CM’s Court to Mavoko SPM’s Court for trial and determination. She has indicated that the cause of action arose within Kitengela – Isinya road which is within the geographical jurisdiction of Mavoko Law Courts and further that the witnesses hail from Kitengela vicinity and that the Defendants branch offices are located within Nairobi Township. Again the Applicant has indicated the Defendants would not suffer any prejudice if the transfer is effected. I must add that at the time the suit was filed at the Machakos CM’s Court, the Mavoko Court had not been established and that it would be convenient for the matter to be heard and determined at Mavoko Law courts as it would be convenient and just for all involved in the suit that it would be prudent to transfer the same from the Machakos chief Magistrate’s court to Mavoko Senior Principal Magistrate’s court.

For the foregoing observations I find the applicant’s Application dated 4/11/2016 has merit. The same is allowed. Costs shall be in the cause.

It is so ordered.

Dated and delivered this 16th day of February 2017.

D. KEMEI

JUDGE

In the Presence of:-

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