

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISC. CIVIL APPLICATION NO.122 OF 2016

NEWTON JUMA OPIEMI.....PLAINTIFF

VERSUS

SICHUAN YONGZHI CO. LTD.....DEFENDANT

RULING OF THE COURT

1. The Plaintiff/Applicant has filed a Notice of Motion dated 3rd June, 2016 under the Provisions of section 18(1) and (2) and Section 3A of the Civil Procedure Act seeking for the following reliefs:-

(1) THAT this Honourable court be pleased to order the transfer of civil Suit No.490 of 2015 Machakos to the Principal Magistrate's Court at Mavoko in Athi river to be tried and disposed of by such court.

(2) THAT the costs of this Application be provided for.

The Application is supported by the annexed affidavit of the Applicant's Advocate Abednego Nyambati sworn on even date and which raised the following grounds:-

(a) THAT the plaint dated 12/01/2016 was filed at the chief Magistrate's court at Machakos.

(b) THAT the Defendant is situated within Mavoko.

(c) THAT it is only fair and just and in the interest of justice that the orders sought be granted.

2. The Application was not opposed by the Defendant/Respondent save that it sought for costs of the same on the ground that the Plaintiff having known that the cause of action arose in Mavoko should not have filed suit at Machakos law Courts.

3. I have considered the Plaintiffs Application and the response thereto by the Defendants. A perusal of the pleadings namely Plaint and defence in Machakos CMCC. No.490 of 2015 reveals that the cause of action arose in Mavoko where the Defendant is situate and carries on business. Since the Defendant's counsel does not oppose the transfer of the Machakos CMCC 490/2015 to Mavoko, I find it would be convenient for both parties to have the matter heard at Mavoko law courts. No prejudice shall be occasioned to both the Defendant and the Plaintiff since their right of accessed to justice will be realized.

In the result the Applicant's Application dated 3/06/2016 is allowed with costs to the Defendant/Respondent.

Dated and Delivered at Machakos 9TH day of MARCH, 2017.

D. K. KEMEI

JUDGE

In the presence of:-

Makau for Respondent

C/A: Munyao