



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS APPLICATION NO.254 OF 2016**

**ANTHONY MUTISYA .....APPLICANT**

**VERSUS**

**PETER KIOKO.....RESPONDENT**

**RULING OF THE COURT**

1. The Plaintiff/Applicant has filed an Application dated 23<sup>rd</sup> September, 2016 under Section 11, 18, 1A, 1B, 3A of the civil Procedure Act and Order 51 of the Civil Procedure Rules seeking for the following reliefs:-

- 1. THAT this Honourable Court be pleased to transfer Machakos CMCC No.290 of 2016 from Machakos Law Courts to the Principal Magistrate's Court at Kangundo.**
- 2. THAT costs of this application be provided for.**

2. The Application is supported by an annexed Affidavit of **Anthony Mutisya** sworn on even date and on the following grounds:-

- (a) THAT the Principals Magistrate's Court at Kangundo is vested with both pecuniary and territorial jurisdiction to hear and determine the cause.**
- (b) THAT the matter is a fresh one as it has not taken off.**
- (c) THAT the Respondent shall suffer no prejudice if the matter is transferred to the court in Kangundo.**
- (d) THAT it is in the interest of justice to grant the orders sought.**

3. The Applicant's case is that he filed this suit at Machakos Law Courts since the cause of action arose along Machakos – Kangundo Road but during the service of Summons to Enter Appearance he discovered that the Defendant resides in Kware Market in Kangundo District. It is the Applicant's contention that it is fair and just to have the suit transferred to Kangundo Law courts which has jurisdiction to hear and determine the suit since the cause of action occurred there and the Defendant resides within Kangundo. The Applicant further contents that the Respondent shall suffer no prejudice if matter is transferred to Kangundo Law courts as it has both pecuniary and territorial jurisdiction.

4. I have considered the applicant's Application and the Affidavit and Grounds in support thereof. A perusal of the Complaint filed namely **Machakos CMCC. No.290 of 2016** reveal that the cause of action arose along Machakos- Kangundo and that the Defendant resides within Kangundo. The Civil Procedure

Act provides that suits should be filed at the court where the cause of action arose or where the Defendant resides or works for gain. I find it would be convenient to have the suit heard at Kangundo Law Courts which has both pecuniary and territorial jurisdiction. The Respondent is not likely to suffer any prejudice if the suit is transferred to Kangundo Law Courts. Since the right of access to justice will not be hindered as it would be nearer and convenient for the parties. The Respondent was duly served with the Application as confirmed by the Affidavit of service but he did not file any Replying Affidavit or grounds of opposition. Hence I find the Application unopposed.

5. In the result the Applicant's Application dated 23/09/2016 is allowed. Costs shall be in the cause.

Dated, signed and Determined at Machakos this 5<sup>th</sup> day of April 2017.

**D. K. KEMEI**

**JUDGE**

In the presence of:

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