



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISCELLANEOUS APPLICATION NO. 249 OF 2016

KAMUYA MULOO

**ROSE KATULI KAMUYA (Suing as the legal representative of the Estate of
JAMES SILA KAMUYA (deceased)).....APPLICANTS**

VERSUS

NGIGE PAUL.....RESPONDENT

RULING OF THE COURT

1. The Applicant has filed a Notice of Motion dated 21/09/2016 under the Provisions of Section 11, 18, 1A, 1B, 3A of the Civil Procedure act and order 51 of the Civil Procedure Rules seeking for the following prayers namely:-

(1) THAT this Honourable court be pleased to transfer Machakos CMCC No. 323 of 2011 from Machakos Law Courts to Kajiado Law Courts.

(2) THAT costs be provided for.

2. The application is supported by the Affidavit of the Applicant's Counsel sworn on even date and further supported by the following grounds namely:-

(a) THAT the Magistrate's court at Kajiado is vested with both pecuniary and territorial jurisdiction to hear and determine this cause.

(b) THAT the matter is a fresh one as it has never taken off.

(c) THAT the Respondent shall suffer no prejudice if the matter is transferred to Kajiado Law Courts.

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

3. The Applicant's case is that he has learnt that the cause of action arose along Namanga – Kajiado Road: that this case was inadvertently filed at Machakos law Courts and which now be transferred to Kajiado Law Courts as it would be proper since the said court has both pecuniary and territorial jurisdiction to hear and determine the suit.

4. I have considered the Applicant's Application. I have perused the copy of the Complaint dated 18/05/2011 and filed at Machakos Law courts on the 24/05/2011. The cause of action is described in paragraph 4

thereof to have arisen along Namanga – Kajiado Road at Bulls Eye. Hence by dint of the clear provisions of the Civil Procedure Act the suit ought to have been filed at the court within which the cause of action arose or where the Defendant resides or carries on business. The Defendant has been described as residing within the Republic of Kenya which is rather not specific as required by the Civil Procedure Act. A Plaintiff has only two options from which to choose while filing a suit namely where the cause of action arose or where the Defendant resides or works for gain. From the description in the plaint, the only option available to the Plaintiff was to file a suit at the court within which the cause of action arose and in this case the same should have been filed at Kajiado Laws Court. It seems it has taken the Applicant over five years to prosecute this case and now claims suit was inadvertently filed at Machakos Law courts instead of Kajiado Law Courts. He has not explained the reasons for the delay. However, I shall leave that to the trial court. I note that the Respondent was duly served with the Application but did not file any Replying Affidavit or Grounds of Opposition. The Respondent would have had the opportunity to challenge the Applicant as regards the choice of court and the inaction to prosecute the suit. Hence the Application remains unchallenged. It is also noted that the suit has not been heard and thus I find no prejudice will be occasioned to the Respondent if the same is transferred to Kajiado Law Courts.

5. In the result I find the Applicant’s Application dated 21/09/2016 merited. The same is allowed with costs to be in the cause.

Dated, signed and Delivered at Machakos this 5th day of April 2017.

D. K. KEMEI

JUDGE

In the presence of:

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