



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

MIS.APPLN NO.32 OF 2015

WEST KENYA SUGAR CO. LTD.....PLAINTIFF

VERSUS

ELAM SHITAMBASI LUKALIADEFENDANT

RULING

1. By the Notice of Motion dated 19/05/2015 which application is brought pursuant to the provisions of Sections 3,3A and 18 of the Civil Procedure Act Order II Rule 3 (h) and Order 51 Rule 1 of the Civil Procedure Rules (CPR) and any other enabling provisions of the law, the applicant prays for ORDERS:-

1. THAT this Honourable Court be pleased to transfer Butali PMCC No.128 of 2014 to Kakamega Chief Magistrate's Court for trial and disposal.
2. THAT upon prayer 1 being granted this Honourable Court be pleased to order consolidation of:
 - i) Kakamega CMCC No.426 of 2013
 - ii) Butali PMCC No.128 of 2014
3. THAT Chief Magistrate's Court Civil Case No.426 of 2013 be adopted as the principal file
4. THAT in the result, the two suits be heard together
5. THAT the costs of this application be in the cause.

2. The application is premised on the grounds set out on the face thereon the principal one being that the suit sought to be transferred and the suit already filed at the Chief Magistrate's Court Kakamega raise similar questions of fact and law and both suits revolve around the same set of facts, that is, the injuries sustained. The applicant also contends that hearing the two suits together will result in timely and contemporaneous conclusion of the two suits, an eventuality, that will be in the interests of justice for all parties concerned.

3. There is also an affidavit sworn by Gerald Okoth on 19/05/2015 in support of the application. The deponent reiterates the averments that are set out on the face of the application and says that the Plaintiff in both suits is one and the same person, namely, Elam Shitambasi Lukalia. According to copies of pleadings in the two suits, Kakamega CMCC No.426 of 2013 was filed by the firm of Khasoa & Co. Advocates on his behalf. The case was filed on 13/10/2013. On the other hand, Butali PMCC No.128 of 2014 was filed by the firm of Kitiwa & co. Advocates of Eldoret.

4. The application was duly served on both Counsel on 20/05/2015 and 03/06/2015 respectively but none of the said firms has filed any replying affidavit and/or grounds of opposition. When the same came up for hearing on 07/07/2015, it proceeded ex parte. Mr. P. Samba advocate for the applicants urged the

Court to grant the orders as prayed.

5. This application is brought under Sections 3,3A and 18 of the CPA. Sections 3 and 3A of the Act donate limitless inherent special jurisdiction to this Court to make such orders as would meet the ends of justice or to prevent abuse of the Court process. Section 18 on the other hand gives power to the High Court to withdraw or transfer any case instituted in the subordinate Court. This can take place at any stage of the proceedings. This Court also has power to retransfer the same case for trial or disposal to the Court from which it was withdrawn.

6. In the instant case, the applicant wants the Butali case transferred to the Chief Magistrate’s Court at Kakamega on the ground that the Plaintiff in both cases is one and the same and secondly that the facts are the same in each case.

7. Upon careful consideration of the application and the law, I am satisfied that the applicant has made out a case for the orders sought. I also find that the Respondent is clearly in abuse of the process of the Court by filing two similar suits in two different Courts by two different firms of advocates. In the circumstances, the Notice of Motion dated 19/05/2015 is found to be meritorious and the same is hereby allowed. I now make the following orders:-

1. Butali PMCC No.128 of 2014 be and is hereby transferred to Kakamega Chief Magistrate’s Court for trial and disposal.
2. Upon compliance with (1) above Kakamega CMCC No.426 of 2013 and Butali PMCC No.128 of 2014 shall be consolidated with Kakamega CMCC No.426 of 2013 being adopted as the principal file.
3. The two suits shall be heard together.
4. The costs of this application shall await the final determination of the two suits by the Chief Magistrate’s Court at Kakamega.

Orders accordingly.

Ruling delivered, dated and signed in open Court at Kakamega this 16th day of July 2015.

RUTH N SITATI

J U D G E

In the presence of:

Mr. Mukabi for Mrs Odek (present).....for applicant

N/A.....for Respondent

(Kakamega CMCC 426/2013)

N/Afor Respondent

Butali PMCC 128/2014

Lagat.....Court Assistant