



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 53 OF 2014

FRED OCHIENG AUMA APPLICANT

V E R S U S

NICHOLAS ONDEGO RESPONDENT

RULING

1. Plaintiff sued Defendant in Mombasa Chief Magistrate's Court **Civil Case No. 1128 of 2013** (Magistrate's case). Plaintiff's claim is that Defendant appointed him as an agent to secure a buyer for the Defendant's property in Kisumu. Plaintiff pleaded that Defendant gave him written instructions in that regard and undertook to pay Plaintiff a commission if he secured such a buyer.
2. Defendant has filed Notice of Motion dated 26th February 2014 where Defendant seeks the transfer of the Magistrate's case from Chief Magistrate's Court, Mombasa to Chief Magistrate's Court, Nairobi. Defendant has based the application on the ground that he works and resides in Nairobi and according to Section 15 of the Civil Procedure Act, the case should have been filed in Nairobi.
3. The Defendant admits Plaintiff works and resides in Nairobi but submitted that he had the option of filing the case in either Mombasa, where the Defendant signed the letter appointing him an agent, or in Nairobi where the Defendant resides. He based his above submissions on the provisions of Section 15.
4. Section 15 provides-

“Subject to the limitations aforesaid every suit shall be instituted in a Court within the local limits of whose jurisdiction-

- a. **the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit actually and voluntarily resides or carries on business or personally works for gain or**
- b. **any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business or personally works for gain, provided either the leave of the court is given, or the defendants do not reside or carry on business, or personally work for gain as aforesaid acquiesce in such institution: or**
- c. **the cause of action, wholly or in part arises.”**

That Section however is preceded by Sections 12, 13 and 14 which provide where a suit should be filed. Sections 12 and 13 refer to a claim of a wrong or recovery of immovable property. In that case those Sections provide that a claim shall be filed within the local limits of where the immovable property is situated. Those Sections do not clearly apply to the subject Magistrate's case between the Plaintiff and Defendant. The Plaintiff's claim is for breach of contract. Section 14 provides that where the wrong is to a person or moveable property, and the wrong was within the local limits of one Court and Defendant resides in another jurisdiction the suit may be instituted in one of those Courts at the Plaintiff's option. Again I repeat, Plaintiff's claim is in contract. It is therefore not a wrong to a person or moveable property.

5. The Section that addresses the parties case in the Magistrate's Court is Section 15 reproduced above. Bearing in mind Section 15(a) the Court with the jurisdiction over the Magistrate's Court case is Nairobi because that is where the Defendant resided at the commencement of the suit.
6. The Defendant's application dated 26th February 2014 therefore succeeds. I grant the following orders-
 - a. **Mombasa Civil Suit No. 1128 of 2013 is hereby transferred to the Chief Magistrate's Court Milimani, Nairobi for disposal.**
 - b. **The costs of the Notice of Motion dated 26th February 2014 are awarded to FRED OCHIENG AUMA.**

DATED and DELIVERED at MOMBASA this 5TH day of JUNE, 2014.

MARY KASANGO

JUDGE