



REPUBLIC OF KENYA

High Court at Eldoret

Miscellaneous Application 84 of 2011

JOSEPH KHAMAIISI.....1ST APPLICANT

SAMSON KHAMAIISI.....2ND APPLICANT

DAUDI KHAMAIISI.....3RD APPLICANT

VERSUS

CHARLES OKUMU.....RESPONDENT

RULING

The applicants, **Joseph Khamaisi**, **Samson Khamaisi** and **Daudi Khamaisi** by their Notice of Motion filed on 23rd June, 2011, seek the transfer of **Nyando PMCCC No. 16 of 2011** to Kapsabet Principal Magistrate's Court for hearing and determination on the main grounds that the cause of action arose and the defendant, together with their witnesses, reside in Nandi County.

When the application came up for hearing before me on 24th July, 2012 counsel for the respondent **Charles Okumu**, raised a preliminary objection on the ground that if the Nyando has no jurisdiction to entertain the dispute between the applicants and the respondent, then this court similarly has no jurisdiction to make an order transferring the suit from Nyando to Kapsabet. Counsel cited two High court decisions for that proposition. The two decisions were made by **L. Kimaru J**, in **Private Development Company Limited -Vs- Rebecca & Another** and **Bishop Christopher Ndungu -Vs- Andrew Abungu [2006]KLR.**

The preliminary objection was opposed by counsel for the applicants on the basis that the jurisdiction of this court does not depend on whether Nyando Court has jurisdiction.

I have considered the rival submissions of counsel and the two decisions relied upon by counsel for the respondent. Having done so, I take the following view of this matter. The applicants have invoked order 50 Rule 1 of the Civil Procedure Rules as their basis of moving the court. With respect, that order is not relevant to this application. The appropriate provisions are however found in sections 15 and 18 of the Civil Procedure Act. The latter is pertinent to the matter under consideration. Subsection 1 thereof reads as follows:-

“18(1). On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard or of its own motion without such notice, the High Court may at any stage:

(a) transfer any suit appeal or other proceedings pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(b) Withdraw any suit or other proceeding pending in any court subordinate to it and thereafter:

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or

(iii) dispose of the same; or

(iv) re-transfer the same for trial or disposal to the court from which it was withdrawn.”

The jurisdiction of the High Court to withdraw and transfer cases instituted in subordinate courts appears unfettered, the only limitation being the competence of the subordinate courts. The jurisdiction of Nyando Principal Magistrate's Court is the same as that of Kapsabet Principal Magistrate's Court. Both courts are held by Principal Magistrates who have jurisdiction throughout the entire Republic of Kenya. The decisions invoked by the respondent's counsel are merely of persuasive value and were in any event made after hearing the parties on the applications and not on preliminary objections. Besides, those decisions were made before sections 1A and 1B of the Civil Procedure Act were incorporated in our law. They were also made before our New Constitution came into being. It is now a Constitutional principle that justice shall be administered without undue regard to procedural technicalities.

In all those premises, I have come to the conclusion that the preliminary objection has not been well taken and is overruled.

Order accordingly.

DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF SEPTEMBER, 2012.

**F. AZANGALALA
JUDGE**

Read in the presence of:-

Mr. Mwinamo H/B for Mr. Kitur for the Appellant.

**F. AZANGALALA
JUDGE**

5TH SEPTEMBER, 2012