



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(CORAM: MUSINGA, GATEMBU & MURGOR, J.J.A.)**

**CIVIL APPEAL NO. 72 OF 2015**

**BETWEEN**

**ALLAN FWAMBA MALILO ..... APPELLANT**

**AND**

**TAI CONSTRUCTION COMPANY LIMITED .....RESPONDENT**

***(An appeal from the Ruling of the High Court of Kenya at Bungoma (Ali-Aroni, J.) delivered on 1<sup>st</sup> July, 2015 in MISC. APPL. NO. 191 OF 2012)***

**JUDGMENT OF THE COURT**

1. This appeal arises from the ruling of **Ali-Aroni, J.** delivered on **1<sup>st</sup> July, 2015** declining to order transfer of **Bungoma CMCC No. 138 of 2010** to Kakamega Law Courts for trial and disposal.
2. The applicant, who was residing in Bungoma, was injured in a road traffic accident that occurred near Kakamega Provincial General Hospital within Kakamega town. The respondent company, the owner of the motor vehicle that allegedly caused the accident, is based at Eldoret.
3. In the statement of defence, the respondent had denied that the Chief Magistrate's Court at Bungoma had jurisdiction to hear and determine the suit.
4. In the affidavit sworn in support of the application for transfer of the suit, the applicant conceded that the suit had been filed in a court that lacked territorial jurisdiction to hear and determine it, that is, Bungoma Chief Magistrate's Court.
5. In her ruling, the learned judge, citing **OMWOYO VS AFRICAN HIGHLANDS & PRODUCE COMPANY LIMITED [2002] 1 KLR 199**, held that the High Court had no jurisdiction to transfer a suit from a court which has no jurisdiction to try it to any other court. The appellant was aggrieved by that finding and preferred an appeal to this Court.
6. During the hearing of the appeal, **Mr. Murunga**, learned counsel for the appellant while conceding that the suit was wrongly filed in Bungoma Chief Magistrate's Court, argued that the High Court had power to order transfer of the suit to Kakamega Law Courts. He submitted that the jurisprudence in **OMWOYO VS AFRICAN HIGHLANDS & PRODUCE COMPANY LIMITED (Supra)** was no longer good law, considering that **Article 159 (2)** of the **Constitution of Kenya, 2010** requires that justice be administered without undue regard to procedural

technicalities.

7. **Mr. Maritim**, learned counsel for the respondent, submitted that the issue of territorial jurisdiction as stipulated under **Section 14** of the **Civil Procedure Act** was not a procedural technicality that could have been overlooked by the High Court in its consideration of the application for transfer of the suit. In his view, the appellant, having realized that he had filed the suit before a court that lacked territorial jurisdiction, ought to have withdrawn the suit and filed it before the appropriate court.
8. We have considered the appeal before us and the brief submissions by counsel. **Section 14** of the **Civil Procedure Act** states as follows:

**“14. Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of those courts.”**
9. From the foregoing, it is clear that the suit ought to have been filed either in Eldoret where the respondent company is based or Kakamega where the accident occurred. The judge was right in holding that a suit filed in a court without jurisdiction cannot be transferred to another court.
10. We do not agree with Mr. Murunga that the issue of territorial jurisdiction of a court can be treated as a procedural technicality that it ought to be discarded by our courts. The Civil Procedure Act contains elaborate details regarding the place of suing. These provisions should not be disregarded, otherwise untold hardship and injustice may be occasioned to litigants by way of suits being filed indiscriminately before any court.
11. We find this appeal lacking in merit and consequently dismiss it with costs to the respondent.

**Dated and delivered at Kisumu this 27<sup>th</sup> day of May, 2016.**

**D. K. MUSINGA**

**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, FCI Arb**

**JUDGE OF APPEAL**

**A.K. MURGOR**

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

**DEPUTY REGISTRAR**