



REPUBLIC OF KENYA



Ong’uti v Sunlam Insurance Agency Ltd (Civil Miscellaneous Application E335 of 2023) [2024] KEHC 328 (KLR) (Civ) (26 January 2024) (Ruling)

Neutral citation: [2024] KEHC 328 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL MISCELLANEOUS APPLICATION E335 OF 2023
AN ONGERI, J
JANUARY 26, 2024**

BETWEEN

EDWIN MOTARI ONG’UTI APPLICANT

AND

SUNLAM INSURANCE AGENCY LTD RESPONDENT

RULING

1. The application coming for consideration is the one dated 24/5/2023 seeking the following orders;
 - i. That Presiding Judge to allow the application so filed under certificate of urgency be heard and determined expeditiously.
 - ii. That the Presiding Judge to transfer Milimani Commercial Courts CMCC 9251 of 2017 To Narok Law Courts so filed at Nairobi Milimani Law Courts to Narok Law courts and be consolidated with Narok Chief Magistrates Courts CMCC 175 of 2018 pending the hearing and determination of the suit before Hon. Daniel Ngayo Court 4 at Narok Magistrate Court to serve the interest of justice.
 - iii. That the police officer at DCI Nairobi Headquarters to be issued by Sanlam Insurance Ltd, original policy documents of motor vehicle registration number KBT xxx on record with respondent
 1. With documents on.030/070/1/256105/2016/1 of Sanlam Insurance Agency for motor vehicle registration KBT xxx.
 2. Policy documents no. 020/070/1267910/2017/12 on Sanlam Insurance Agency for motor vehicle registration KBT xxx.



3. Policy documents no. Policy 020/070/1/256125/2016/1 of Sanlam Insurance Agency for Motor Vehicle registration no. KBT xxx.
 4. purporting to have been attested and or executed by applicant Edwin Motari Nguti and issue a report to Narok Chief Magistrate courts and or take any necessary remedies on any person identified or found culpable pending the hearing and determination of the suit.
- iv. That costs be provided for.
2. The application is based on the following grounds;
- i. That the expense and difficulties of the trial would be so great as to lead to injustice proceeding with the matter in Nairobi for the subject motor vehicle registration number KBT xxx is currently at a yard at Narok within Narok County.
 - ii. That the motive and the character of the proceedings, are to ensure just and fair hearing without causing undue hardship on the litigants.
 - iii. That the nature of the relief of remedy sought, the interests of the litigants and the more convenient administration of justice, will be for the expeditious hearing of the suit without economic constrain which is best addressed at Narok Law courts.
 - iv. That there is a pending suit CMCC 175 of 2018 at Narok Law courts before Hon. Daniel Ngayo Court 4, where the applicant herein is the defendant having been sued and witnesses are residents of Narok would cause economical constrain allowing the said suit to proceed in Nairobi.
 - v. That the existence of civil suit CMCC 9251 Of 2017 at Milimani Law courts has been lodged in a competent court to try the same save for an existing CMCC 175 of 2018 so filed at Narok Law Courts where Edwin Motari is a defendant.
 - vi. That an accident arose at Siyiapei – within Narok County within the jurisdiction and of Narok Law courts and currently the said motor vehicle registration KBT xxx is at a yard owned and managed by the respondent within Narok County.
 - vii. That the court to consider balance of convenience, questions of expense, interest of justice and possibilities of undue hardship, taking into consideration CMCC 175 of 2018 had been filed by at Narok Chief Magistrate court where applicant herein is the defendant.
 - viii. That the said Milimani Law courts has jurisdiction to hear and determine the said suit however the transfer is to facilitate the court to arrive at just and fair determination without prejudice to the parties.
 - ix. That the court to consider and give effect to the overriding objective specified in Section 1A and ought not be uncertain as to whether under all the



circumstances it is proper to order transfer for the said motor vehicle KBT xxx is at a yard owned and managed by the respondent herein Sanlam Insurance agency limited within Narok County.

- x. That *Civil Procedure Act* gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party considering that an accident occurred within Narok County and the matter was reported to Narok Police station.
 - xi. That applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to by the plaintiff and leaving him to seek his remedy in another jurisdiction.
 - xii. That it is well established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted.
 - xiii. That the applicant has made a strong case to the satisfaction of the court that the application ought to be granted for the transfer of CMCC 9251 of 2017 filed at Nairobi to Narok Chief Magistrate court and be consolidated with CMCC 175 of 2018 so filed at Narok Law courts.
 - xiv. That the court in exercising the discretion to consider most of the expense which the parties in the case are likely to incur in transporting and marinating witnesses to Nairobi yet the accident arose at Narok and was booked at Narok Police station.
3. The parties filed written submissions which I have considered.
 4. The sole issue for determination is whether CMCC No. 9251 of 2017 should be transferred to Narok CMCC to be consolidated with Narok CMCC No. 175 of 2018.
 5. I find that the over objective under Section 1A and 1B of the *Civil Procedure Act* is to facilitate just, expeditious, efficient and proportionate resolution of disputes.
 6. The law requires that a case be heard in the lowest court competent to hear the case. The vehicle the subject of this case is at Narok.
 7. I find that the application is merited. I allow it in the following terms;
 - i. That Milimani CMCC No. 9251 of 2017 be and is hereby transferred to Narok Chief Magistrate's Court where a similar case no. Narok Chief Magistrates CMCC No. 175 of 2018 is pending.
 - ii. That the two cases be consolidated to save on judicial time.
 - iii. Each party to bear its own costs of this Application.
 - iv. That this file be and is hereby closed.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 26TH DAY OF JANUARY, 2024.

A. N. ONGERI



JUDGE

