



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc. Appli.162 of 2006

CHRISTINA NDUKU KINYUNGU..... PLAINTIFF

VERSUS

CARNATION PLANTS LIMITED..... DEFENDANT

RULING

The Applicant Company herein is the Defendant in SRMCC No. 303 filed at the Senior Resident Magistrates Court at Kajiado. The Company wishes that the said suit be transferred from the said Court to the Chief Magistrate's Court, Milimani Commercial Courts and has brought this application inter alia under Section 18 of the Civil Procedure Act which provides as follows:

“S. 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 proceeding 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 dispose of the same; or**
 - (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.**

2. Where any suit or proceeding has been transferred or withdrawn as aforesaid, the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”

Although the above provisions of the Civil Procedure Act do not provide for the circumstances under which a transfer may be ordered, there must be some good and sufficient reasons or grounds for doing so since the institution and trial of suits must, of essence comply with the provisions of the Civil Procedure Act and Rules as well as the Judicature Act as to the Courts' pecuniary, territorial and/or other

jurisdiction.

The present application, as filed, gave three main grounds for the Applicants' desire to have the subject suit transferred as follows:

- (a) **THAT the defendant carries on its business in Nairobi area.**
- (b) **THAT most of the witnesses to be called at the trial live in Nairobi area**
- (c) **THAT the trial Magistrate of Kajiado has shown bias against the applicant in similar matters.**

At the hearing of this application however, Counsel for the Applicant abandoned the ground of alleged bias and proceeded to submit that the Defendants' business is in Kitengela which, according to Counsel is within Nairobi. Counsel for the Respondent on the other side insisted that the cause of action arose in Kitengela, in Kajiado District which in view of S. 12 (3) of the Civil Procedure Act meant that the Kajiado Court was the proper Court in which to file the suit and not the Milimani Commercial Court. The suit (as is clear from the copy of the plaint annexed to the application) not being one for compensation for a wrong to immovable property, S. 12(e) does not apply. Mrs. Wambugu, holding brief for Mrs. Guserwa submitted, and rightly so, that the place of suing is not limited to the place where the cause of action arose and that a suit can be filed where the Defendant resides or carries on business.

The contention herein is simply that one party (the applicant in this case) believes that Kitengela is within the Nairobi District while the other (the Respondent) believes that it is in Kajiado. With due respect to Counsel for the Applicant this Court is not required to make independent enquires in order to satisfy itself of the geographical or territorial boundaries within which either a cause of action arose or a Defendant resides or carries on business. It is for the Applicant to supply the necessary proof. This Court takes judicial notice of the fact that Kitengela is in the Rift Valley province and not Nairobi. Even if, which is not claimed herein, the situation was such that the wrong complained of in the subject suit was to be found to have been committed within the local limits of Kajiado Court and the Defendant be found to be carrying on business in Nairobi, then in that case, the Plaintiff would still have the option to institute recovery action in any of the two jurisdictions under S.14 of the Act. I am afraid that despite the abandonment of ground 3, there is a hint of mala fides in this application in view of the depositions in paragraph 3 and 5 of the Supporting Affidavit.

I am unable to allow the application for the reasons given and do hereby dismiss the same with costs to the Respondent.

Dated and delivered at Nairobi this 24th day of March, 2006.

M.G. Mugo

Judge

In the presence of:

Guserwa for the Applicant

Mburu for the Respondent