



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI AT NAIROBI

FAMILY DIVISION

HIGH COURT CIVIL SUIT NO.12 OF 2012

L N..... PLAINTIFF/APPLICANT

VERSUS

A N ALIAS N M DEFENDANT

RULING

1. In his application by notice of motion dated 19th March 2012, **Mr. A N** (the applicant) seeks an order that Civil Suit No.12 of 2012 (O.S.) be heard and determined by this Court sitting in Embu and accordingly, the court file be transferred to the Embu station of this Court.
2. The grounds on which the application is made include the averment that the land which is the subject matter of the suit is located in Mbeere District nearer the Embu station of this Court and further, that the witnesses in the case are residents of Mbeere District. The application is supported by the applicant's affidavit sworn on 19th March 2012 which shows, inter alia, that the applicant is the husband of Lucia Ngari, the respondent, who has filed against the applicant in this Court Civil Suit No.12 of 2012 (O.S.) seeking a declaration that the properties referred to in the originating summons are joint properties and an order that they be sold and the net proceeds thereof shared equally between the respondent and the applicant.
3. **Mrs. Lu N**, in her replying affidavit to the said motion avers that she has moved out of Embu and prefers to have the suit heard and determined in Nairobi. She cites security reasons for her averment and alleges that the applicant has threatened to eliminate her.
4. The suit was filed by the respondent in this Court at this station (Nairobi). The applicant who is the defendant in the suit resides at Gachariri in Mbeere District while the respondent who is the plaintiff and filed the suit now resides in Nairobi.
5. Section 18 of the Civil Procedure Act on which the application is predicated has no application as it relates to transfer of suits by the High Court from one court to another. Transmission by the High Court of a suit from one station of the High Court to another station of the High Court does not amount to transfer of a suit. But under its inherent power, the High Court has jurisdiction to

make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court (see Section 3A of the Civil Procedure Act).

6. Section 12(d) of the Civil Procedure Act, requiring a suit for the determination of any other right to or interest in immovable property should be instituted in the court within the local limits of whose jurisdiction the property is situate does not relate to the High Court as the High Court has jurisdiction all over the Republic of Kenya and hence properties in Kenya in respect of which the High Court is called up to determine the rights of parties are all within the jurisdiction of the High Court. But Section 15 of the Civil Procedure Act requires suits to be filed in the court nearest to where the defendant resides or where the cause of action arose.
7. In this case, the respondent filed the suit in the High Court at Nairobi although the applicant (who is the defendant in the suit) resides in Mbeere, Embu District. The applicant now prays that the suit be heard at Embu Station of this Court. He cites the aforementioned reasons as the basis for the application. On the other hand, his estranged wife who is the respondent avers that her life will be exposed to danger in Embu if the suit is heard in Embu as there are threats on her life by the applicant.
8. I observe from the application that there is already pending in this Court, Divorce Cause No.181 of 2011 involving the same parties. No application has been made to transfer that cause to Embu station of this court. One would have thought that the reasons advanced for the suit to be heard in Embu would obtain in the divorce cause as the nature of the matter is not commercial and involves only the parties and the impression created that there is a plethora of witnesses (who may be required to travel all the way from Mbeere, Embu to Nairobi if the application is disinclined) is an exaggeration. On the other hand, other than making the averment, the respondent has not given the details of the alleged threats by the applicant and the report to the police.
9. In considering whether to transmit a suit to another Judge in another station for hearing and determination, the factors to be considered include whether the suit was instituted in compliance with the requirements of the Civil Procedure Act; the balance of convenience; the expense on the part of the parties; the interest of justice and possibilities of undue hardship and generally whether the hearing where the suit is filed will prejudice the rights of the party seeking orders for it to be heard in another station.
10. In this case, after weighing one thing with another, and regard being had to the reasons advanced by the applicant and the retort by the respondent, it seems to me that although ideally the suit should have been filed in Embu station of this Court, and although the allegations by the respondent lack details the applicant has not refuted that he has threatened her life and that the matter is with the police. It is my finding that the applicant has not made out a strong case for the suit to be transmitted to Embu station and as the divorce cause is also in this station and the applicant is not inconvenienced by its being heard here in Nairobi, it seems logical that there is no reason why both cannot be heard and determined in Nairobi. For these reasons, I decline to grant the application which I dismiss with no order as to costs.

G. B. M. KARIUKI, SC

JUDGE

Dated and delivered at Milimani Law Courts, Nairobi, on this 19th day of December 2014 by the Honourable Justice W. Musyoka on behalf of Justice G.B.M. Kariuki.

JUDGE

COUNSEL APPEARING

Mr. D. K. Mungai Advocate, of Mungai Kivuti & Co. Advocates for Respondent/Plaintiff

Ms E. Nyaga Advocate, for the Respondent/Applicant

Court Clerk - Mr. Wahinya Kugwa



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