



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc Appli 165 of 2006

GEORGE MORARA NYANDORA.....PLAINTIFF

VERSUS

CARNATION PLANT LIMITED.....DEFENDANT

RULING

This Ruling relates to an application by the Defendant Applicant under Section 3A and 18 of the Civil Procedure Act seeking an order of transfer of Civil Suit SRMC No. 163 of 2005 from the Senior Resident Magistrates Court at Kajiado to Milimani Commercial Court for hearing and determination. An order providing for the Costs of the application is also sought. The grounds upon which the application is brought are that the Defendant carries on business in the Nairobi area, that most witnesses as would be called to testify live in Nairobi and that the trial Magistrate at Kajiado the Hon. Mrs Onyango has shown bias in her handling of other matters involving the Defendant. The applicants have singled out SRMCC No 152 of 2005 in which they have lodged an appeal as C.A. No 68 of 2006. There is no mention of bias in the copy of the Memorandum of Appeal filed herein as annexure “JKI” to the Applicants further Affidavit of 9th March 2006.

This notwithstanding I do not consider the allegation of bias to be a ground for the transfer of a suit from one court or another but one entitling a party to apply for disqualification of the Judicial officer concerned or as a ground of appeal in the event that an erroneous judgment is passed for that reason.

As regards the ground that the Defendant carries on business in Nairobi I find that no evidence to support that contention has been placed before this court. Even if that were the case, I find that the suit herein being for compensation of a wrong done to the person the same is governed by Section 14 of the civil Procedure Act under which Plaintiff and not the Defendant is accorded a legal option to institute his suit either within the local limits of the jurisdiction of the court where the cause of action arose, or within the jurisdiction of the court where the Defendant resides or carries on business. The Plaintiff chose to

file his suit in Kajiado on the ground that the cause of action arose in Kitengela within the local limits of the Jurisdiction of the Kajiado Court. The Applicant herein has not told this court that the cause of action arose in Nairobi as to waive the Plaintiff's option under section 14 of the Civil Procedure Act. Indeed in paragraph 2 of the Respondents' Replying Affidavit the Respondent depones that the applicant has admitted that fact. The further Affidavit filed by the Applicant on 14th March 2006 does not touch on this aspect and leaves the issue uncontroverted.

Having found that Section 15 does not apply to this suit which falls under Section 14 of the Civil Procedure Act and that bias as alleged is not a ground for consideration in the transfer of suits I am led to uphold Respondents' opposition to the application that the same is not properly before the court, is misconceived and an abuse of the process of the court and that the same should be dismissed.

Accordingly I disallow the application and dismiss the same with costs to the Respondents.

Dated at Nairobi this 23rd day of June 2006

M. G. MUGO

JUDGE

Delivered before:

Mrs Guserwa for Applicant

Mrs Kimani for REspondent



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