



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA**

**MISC.APPLICATION NO 33 OF 2019**

**SIMON IMBAYI KUBASU.....APPLICANT**

**VERSUS**

**JAMES NGARI MWANGI.....RESPONDENT**

**RULING.**

**Background**

By way of way Notice of Motion dated 5<sup>th</sup> April 2019 the Applicant filed this application against the Respondent seeking the following prayers:

***i. Spent***

***ii. That this honourable court be pleased to grant the applicant leave to file suit against the respondent in the Chief Magistrate's Court at Bungoma for recovery of damages in respect of a Road Traffic Accident of 30/11/2017 involving the Applicant and motor vehicle registration number KCH 550X TOYOTA MATATU***

***iii. Costs of this application be in the cause.***

The application is filed on grounds that the applicant is a resident of Bungoma County and the respondent is the registered owner of suit motor vehicle registration number KCH 550X Toyota Matatu.

That on the 30/11/2017 while appellant was on duty, he got involved in a road traffic accident while on aboard the respondent's motor vehicle at Sagana-Kagio road in Kirinyaga County.

That the applicant is expected to file the suit in Kirinyaga County but due to physical disability and financial constraints he is unable to do so therefore the applicant seeks leave to file his claim in Chief Magistrate's Court Bungoma.

The application is supported by supporting affidavit of Simon Imbayi Kubasu the applicant herein who avers that on the 30/11/2017 while he was on official duty, he got involved in a road traffic accident while on aboard the respondent's motor vehicle at Sagana-Kagio road in Kirinyaga County.

That he sustained injuries from the said road traffic accident which involve serious spinal cord injuries which made him paralyzed therefore her movement has become minimal. That he recorded a statement at Bungoma Police station as he could not travel to Sagana Police station and his P3 form was filled in Bungoma and medical reports were prepared in Bungoma.

He stated that due to complications and critical injuries sustained his movement has become minimal and he cannot travel long distance therefore he prays to be allowed to file his claim within this jurisdiction.

The respondent/Defendant did not file a response to the application. On the 9/10/2019 the application herein was canvassed by way of oral submissions.

Mrs. Wakoli for the applicant submitted that the grounds in support of the applicant's application is that the applicant is paralyzed and bed ridden due to road traffic accident that he sustained along Sagana Road in Kirinyaga County. She submitted that he may not able to travel to Kirinyaga Count to prosecute this suit and prayed that he be allowed to file this suit in Bungoma County.

I have considered the application and oral submission by advocates on record and it is my finding that the issue of determination is whether the applicant should be allowed to file his suit within this jurisdiction.

**PLACE OF SUING :**

The plaintiff/applicant herein resides in Bungoma County while the defendant/respondent is presumed to be residing and/or carrying out business in Kirinyaga County where cause of action arose.

Section 15 of the Act provide suits shall be instituted where the defendant actually resides.

Section 15 provides;

***Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction — where the cause of action arose on***

***(a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or***

Indeed Section 15 of the civil Procedure Act provides that every suit shall be instituted in a court within the local limits of whose jurisdiction the Defendant or each of the Defendants actually or voluntarily resides or carries on business or personally works for gain or have acquiesced in such institution of suit of the cause of action wholly or in part arises. Also Section 12 of the said Act provides that subject pecuniary jurisdiction or other limitation prescribed by law suits shall be instituted where subject matter is situate.

The guiding principles to all courts is that where a suit is filed in a court that lacks jurisdiction to hear and determine the suit, then the suit would be deemed a nullity as per the decision of Nyarangi J A in the case of **OWNERS OF MOTOR VESSEL “LILIAN S” VS CALTEX OIL (K) LTD [1989] KLR 1** that:-

***“Jurisdiction is everything without which a court of law has no power to make one more step where a court of law has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter the moment it holds the opinion that it is without jurisdiction.”***

I have considered the application and I am guided by section 15 of the Civil Procedure Act which provides for the place of suing and it is principally the defendant’s place of business. I see no reason to depart from the general principal hence, I disallow the application. In the result I find the Applicant’s Application dated 5<sup>th</sup> April 2019 lacks merit. The same is dismissed with costs to the Plaintiff/Respondent.

It is so decided.

**Dated and Delivered at BUNGOMA this 25<sup>th</sup> day of Nov, 2019.**

**S.N. RIECHI**

**JUDGE**