



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 363 OF 2009

BETWEEN:

EMMANUEL G. JAMBO.....PLAINTIFF

AND

TRANSMARITIME LIMITED.....DEFENDANT

CORAM: THE HON. JUSTICE MR. S.A. KALEMBERA

Mr Tembo, of Counsel for the Plaintiff

Mr Makwinja, of Counsel for the Defendant

Mrs Mangison, Official Interpreter

RULING

Kalembera J

This is an order on the Plaintiff's application for leave to transfer proceedings from the High Court to the Magistrate Court. The application is brought under section 11 (a) (vii) of the Courts Act. It is supported by an affidavit sworn Maxwell A. Tembo, of Counsel for the Plaintiff. The Defendant has filed no response.

The Plaintiff's case as deposed is that the Plaintiff commenced this action by way of Writ of Summons claiming damages for false imprisonment, defamation and malicious prosecution and costs of the action. It is further deposed that the amount claimed will not exceed the sum of MK2,000,000.00 which is perfectly within the jurisdiction of the lower Court. That it is incumbent upon both Counsels to minimize costs and to demonstrate extreme responsibility towards their clients. That it will be inequitable for the Plaintiff (in case he succeeds) to earn costs far in

excess of damages sought merely by reason of choice of forum. That allowing the matter to proceed in the High Court will encourage litigants to commence subordinate court matters (in terms of value) in the High Court.

It is the case for the Defendant as submitted by Counsel that until the court assesses the damages, the Plaintiff can't say that the same won't exceed MK2,000,000.00. Further, that the Plaintiff had done all necessary steps in preparing the matter for trial, and that only a date for trial is remaining. And that the Plaintiff should have brought this application earlier, that is, at the Summons for Directions stage.

The main issue for the court's determination is whether this is a proper matter to be transferred to the Magistrate's Court.

Section 11 (a) (vii) of the Courts Act provides as follows:

"s.11 –Without prejudice to any jurisdiction conferred on it by any other written law the High Court shall have –

(a) Jurisdiction –

(vii) to transfer any civil proceedings from one place to another or to or from any subordinate court and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof."

Thus, this Court has the jurisdiction or power to transfer any proceedings before it, to any subordinate court, or proceedings in any subordinate court to the High Court. The Court must be satisfied that it is convenient for the parties and that no party shall be prejudiced –see: **DPP v Kampunga Mwafulirwa, Misc. Criminal Application No. 173 of 2001.**

In the matter at hand, this is the Plaintiff's case, and the Plaintiff's Counsel has realized that he should have commenced this matter in the Magistrate's court and not the High Court. This being the Plaintiff's case, the Defendant cannot dictate to the Plaintiff as to which forum is appropriate for the Plaintiff's case. I do understand the frustrations by the Defendant, nevertheless, considering the Plaintiff's concessions and arguments, I am inclined to agree with the Plaintiff. I

am satisfied that no party will be prejudiced if the matter was transferred to the Magistrate's Court.

All in all, I grant the Plaintiff's application and order that this matter be transferred to the Chief Resident Magistrate's Court at Blantyre. The matter should proceed to trial as if it had been commenced in the said Magistrate's Court.

PRONOUNCED this 13th day of August 2019, at the Principal Registry, Blantyre.



S.A. Kalembera

JUDGE