

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Miscellaneous Application 267 of 2010

S.M. (*Minor suing thro' F.E.N as next friend*) PLAINTIFF

VERSUS

BLUE SHIELD INSURANCE CO. LTD.DEFENDANT

R U L I N G

This application is for the transfer of **SRMCC No. 153 of 2009** from Kangema Senior Resident Magistrate's Court to Milimani Chief Magistrate's Court in Nairobi for full hearing and determination thereof. It is made by the Defendant/Applicant by notice of motion dated 16th March, 2010 and is brought under **Order L Rule 1** of the **Civil Procedure Rules; Sections 3A, 15, 17 and 18** of the **Civil Procedure Act**; and all other enabling provisions of the law.

The application is supported by the annexed affidavit of Jane Aluoch Abudho, Advocate, and is based on the grounds that the declaratory suit herein arose from **Milimani CMCC No. 10931B of 2005** whose subject matter was a road accident along Valley Road in Nairobi within the jurisdiction of the Chief Magistrate's Court at Milimani; and that the Defendant/Applicant and the Plaintiff/Respondent reside and carry on their business in Nairobi within the jurisdiction of the Chief Magistrate's Court in Nairobi.

The application was filed under a certificate of urgency on 16th March, 2010, and was fixed for hearing *inter partes* on 24th March, 2010. It was then served on the firm of Ndumu Kimani & Co., Advocates for the Respondents, on 18th March, 2010. They received the requisite documents under protest, stating that their Mr. Kimani would be engaged outside Nairobi. They stated neither the actual place where he would be engaged, nor the nature of his engagement. They also did not file any replying affidavit or grounds of opposition. They had sufficient time to instruct another Advocate to hold their brief but they did not do so. In these circumstances, I find that the application is not opposed and that the orders sought ought to be granted on the strength of the grounds stated on the face of the application.

Prayer 1 of the application by Notice of Motion dated 16th March, 2010 is accordingly granted as prayed.

Costs in the cause.

DATED and DELIVERED at NAIROBI this 29th day of April, 2010.

**L. NJAGI
JUDGE**