



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI COMMERCIAL COURTS)
Miscellaneous Application 434 of 2009**

WATSON WAHOME NJURU.....APPLICANT

VERSUS

PRESTIGE INVESTMETNS LIMITED.....RESPONDENT

R U L I N G

This application has been brought by way of a Notice of Motion under Section 3A, 17 and 18 of the Civil Procedure Act & Order 50 rule 1 of the Civil Procedure Rules. The said application seeks the following orders:

- (a) THAT the Chief Magistrate's Civil Case Number 13945 of 2004 at Milimani Commercial Courts be transferred to the Nyeri Chief Magistrate's Court for hearing and final determination.
- (b) THAT costs be in the cause.

During the hearing of the application, Mr. Kimano, the applicant's counsel submitted that he was relying on the application and attached affidavit. On the face of the application, the grounds given in support thereof are as follows:

- That the defendant resides and works for gain in Nyeri.
- That the defendant is now of ill-health and of advanced age.
- That the Nyeri Chief Magistrate's court has jurisdiction to hear and determine Milimani CMCC No. 13945 of 2004. Apparently the supporting affidavit repeats the same reasons.

On the other hand, Mr. Athuok for the respondent, relied on their grounds of opposition dated 6th July 2009. Further to the above, he explained that the offices of the defendant are based in Nairobi and that the original case was filed in the year 2000. After substantial litigation, the applicant paid a claim of Kshs.900,000/- before the matter was transferred to the lower court for hearing. In conclusion, Mr. Athuok stated that the matter has been in the High Court for five years and also for a similar period in the lower court.

After carefully considering the application together with the submissions by learned counsels, it is apparent that nobody has doubted the facts that the applicant has all along stayed in Nyeri and he is of advanced age. Though I agree entirely with the respondent's counsel that the application should have been made at the earliest opportunity, one cannot overlook the advanced age of the applicant. In any

event, the respondent will not suffer any prejudice since he will be adequately compensated in the event that the court rules in his favour. Given the above facts, I hereby exercise my power and discretion to invoke sec. 17 of the Civil Procedure Act to transfer this case to Nyeri Chief Magistrate's Court for hearing. The parties are hereby directed to appear before the Chief Magistrate, Nyeri on 23rd November, 2009 with a view of fixing the hearing date. Since the applicant delayed in filing this application, he will bear the costs of the same.

MUGA APONDI

JUDGE

Ruling read, signed and delivered in open court in the presence of:

N/A for Applicant's Counsel

Mr. Athuok - Respondent's Counsel

MUGA APONDI

JUDGE

10TH NOVEMBER, 2009