



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Misc. Civ. Appli. 310 of 2008**

**JOHN WAGA OKATCH.....PLAINTIFF/RESPONDENT**

**VERSUS**

**DOROTHY AWUOR AKUN.....1ST DEFENDANT/APPLICANT**

**DIANA ROSE OGENO.....2ND DEFENDANT/RESPONDENT**

**R U L I N G**

1. The application before court is the Notice of Motion dated April 28, 2008 by which the applicant seeks an order withdrawing Civil Suit No. 2052 of 2008 from the Chief Magistrates Court at Nairobi (Milimani) and to transfer the same to the Chief Magistrates Court at Kisumu for trial and disposal. The application is premised on the six grounds on the face thereof, the main one being that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's in the said suit reside at Kisumu where the cause of action arose. That because of that fact it would be too expensive for the defendants/applicants if the said suit were to be heard and determined in Nairobi.
2. The application is also supported by the sworn affidavit of Dorothy Awuor Akun, the 1<sup>st</sup> applicant. She reiterates the contents of the grounds in support of the application and says she and the 2<sup>nd</sup> applicant are unable to meet the costs of conducting the suit against them in Nairobi. She also says that the plaintiff lives both in Nairobi and Dudi market within South Gem Location, Wagai Division, Wambasa village of Siaya District where he operates a retail shop and is also a dealer in Kerosene. The deponent has been duly authorized by her co-applicant, Diana Rose Ogeno to act and sign pleadings on her behalf in respect of Milimani CMCC No. 2052 of 2008.
3. Though duly served, the respondent did not file any replying papers. For this reason, Mr. Aboge for the applicant urged the court to allow the application and to consider that the law provides that suits should ordinarily be filed or instituted where the defendants reside.
4. Section 17 of the Civil Procedure Act gives this court the power to transfer suits which may be instituted in more than one place and provides as follows:-  
  
*“Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may, at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court and the High Court after considering the objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed.”*
5. The court has carefully considered the submissions made in support of the application and makes the following findings:-

- (a) *there is no rebuttal to the applicants averments*
- (b) *both defendants in Nairobi CMCC No. 2052 of 2008 reside in Kisumu.*
- (c) *the plaintiff in the said suit resides both in Nairobi and at Dudi Market of Siaya District.*
- (d) *both the Chief Magistrate's Court at Nairobi and the Chief Magistrate's Court at Kisumu have jurisdiction to hear and determine the said Nairobi CMCC No. 2052 of 2008.*

6. In light of the above, this court is of the considered view that CMCC No. 2052 of 2008 should be heard and determined by the Chief Magistrate's Court in Kisumu. Accordingly, I allow the applicant's application for transfer and make the following orders:-

- (1) *Milimani CMCC No. 2052 of 2008 be and is hereby withdrawn and transferred to the Chief Magistrates Court at Kisumu for trial and disposal.*
- (2) *Costs of this application shall be in the cause.*

It is so ordered.

Dated and delivered at Nairobi this 27<sup>th</sup> day of June 2008.

**R.N. SITATI**

**JUDGE**

Delivered in the presence of: