



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII
Misc.Civil Appli. 28 of 2008

SIYAT NOOR GEDI APPLICANT

VERSUS

M. A. BAYUSUF & SONS LIMITED 1ST RESPONDENT

ONESMUS MWASA MUSA 2ND RESPONDENT

RULING

The plaintiff applicant has applied for transfer of Kehancha RMCC.NO.92 of 2005 to Sotik Law Court hearing and determination. The application was made on the grounds that:

- (a) The cause of action arose along Kericho-Sotik road within the jurisdiction of Sotik Law Courts.
- (b) The majority of the witnesses are based or reside at Kericho.
- (c) The respondents will not be prejudiced if the order sought is grant.

The application was supported by the plaintiff's affidavit.

The application was opposed by the defendants/respondents. A replying affidavit sworn by Boniface Githinji Ndumia, the defendant's advocate was filed. He stated that the plaintiff's suit was struck out by the court suo moto for want of territorial jurisdiction, in view of Gazette Notice No.300 of 2007 promulgated by the Hon. The Chief Justice on 19th January, 2007. As such, the suit was not pending before Kehancha Resident Magistrate's Court as alleged, Mr. Ndumia stated.

That averment under oath was not denied by the plaintiff's advocate. If indeed the suit was struck out, there is nothing remaining that is capable of being transferred, even without considering any other argument that was raised by counsel. The plaintiff's application is bad in law and indeed is for striking out which I hereby do. The plaintiff will bear the costs thereof.

DATED, SIGNED and DELIVERED at KISII this 6th Day of June, 2008

D. MUSINGA

JUDGE

Delivered in open court in the presence of

N/A for the applicant

Mr. Nyamurongi H/B for Mr. Musangi for the respondent

D. MUSINGA

JUDGE