

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

Misc Civ Appli 575 of 2006

SALIM ALI RINGI.....APPELLANT

VERSUS

DIAMOND TRUST BANK LIMITED.....RESPONDENT

R U L I N G

This is an application under Sections 3A, 15,17 and 18 of the civil Procedure Act for the transfer of Civil Suit Number 6463 of 2005 from the Chief Magistrate's court at Milimani, Nairobi to the Chief Magistrate's Court at Mombasa for hearing and final disposal. It is based on the grounds that the contract giving rise to that suit was entered into at Mombasa where the defendant also resides.

Mr. Nyaribo Counsel for the Respondent, while conceding that the cause of action arose at Mombasa where the defendant also resides, nevertheless opposed the application on the grounds that the contract itself was performed in Nairobi and the applicant admitted in his defence that the court at Nairobi has jurisdiction. He also accused the applicant of indolence arguing that the suit has been pending for hearing in Nairobi since 1999, now about seven years.

Section 15 of the Civil Procedure Act is quite clear as to where suits should be filed – in the court within the local limits of whose jurisdiction the defendant resides, carries on business or works for gain or where the cause of action arose.

In this case not only did the cause of action arise at Mombasa but the defendant/Applicant also resides there. There is no reason whatsoever why the suit was filed in Nairobi even though in the High Court which has country-wide jurisdiction.

I do not agree with Mr. Nyaribo that the applicant should have applied to the High Court at Nairobi which transferred the suit to the Chief Magistrate's Court at Nairobi to review its order of transfer and have the suit rerouted to Mombasa. That was not necessary. The applicant is within his rights to make this application. Nor do I agree with him that the admission in the defence that the court at Nairobi has jurisdiction in this matter. That admission was made in the defence filed in the High Court before the suit was transferred to the to the lower court. In any case parties cannot even by consent give to the court jurisdiction which it does not have.

I therefore allow this application and order that Civil Suit Number 6463 of 2005 at the Chief Magistrate's Milimani Nairobi is hereby transferred to the Chief Magistrate's Court at Mombasa for hearing and final disposal.

DATED AND DELIVERED THIS 9TH DAY OF FEBRUARY 2007

D.K. MARAGA

JUDGE