

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

Misc Appli 1308 of 2004

SPIN KNIT DAIRY CO.....PLAINTIFF

VERSUS

BENSON WANGAI MWANGI.....DEFENDANT

RULING

By this Notice of Motion dated 27th September 2004 and expressed to be brought under Section 18 (1) (a) of the Civil Procedure Act and Order L Rule 1 of the Civil Procedure Rules seeks orders that this Honourable court be pleased to transfer civil suit – Nairobi PM CC NO. 6758 OF 2004 Milimani Commercial Courts to the Chief Magistrate’s Court Nakuru for hearing and final disposal.

The application is based on the grounds:

- (1) That the cause of action arose within the local jurisdictions of the Chief Magistrate’s Court – Nakuru.
- (2) That there will be no prejudice to the Defendant should the orders sought in this application be granted.

The application is also supported by an affidavit sworn by John Oscar Juma on 29th September 2004 in which he avers that this claim arises out of a traffic road accident which occurred along Nakuru – Eldoret Highway involving motor vehicle registration No. KAQ 360A and motor vehicle registration NO. KAL 961Q; that at the time of filing this suit it was within the Plaintiff’s knowledge that the Defendant resides in Nairobi, that the suit was inadvertently filed in Nairobi, that the cause of action arose in Nakuru within the local jurisdiction of the Chief Magistrate’s Court Nakuru that it is in the interest of justice that the suit be transferred to Nakuru and that the Respondent stands to suffer no prejudice should the court grant the orders sought.

Although there is on record a return of service filed by one Maurice Odhiambo, a process server who depones that he upon receiving a hearing notice and copy of the application travelled to Nakuru and effected service upon M/S Ogola Okeke – Advocate who acknowledged receipt but declined to sign on the originals on the ground that he has no instructions from his client there is no evidence that the said advocate is on record acting for the Defendant.

Such an application should be accompanied with copies of pleadings and more so the plaint and also the defence if any.

In the absence of the said copies of the pleadings, this application is incompetent and therefore it is struck out. But the Applicant is at liberty to file a competent application. Those are the orders of this court.

Dated and delivered at Nairobi this 10th day of May 2007.

J.L.A. OSIEMO

JUDGE