

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
MISC. APPL. NO.211 OF 2004

A JIWA SHAMJI LTD APPLICANT

VERSUS

ALFAYO NGERESA MABERA RESPONDENT

RULING

This is an application Under Section 15 and 18 of CPA seeking for an Order to transfer Principal Magistrate Court (MILIMANI) No.6016 OF 2004 from that Court to Kisii Magistrate's Court. Court was told that the cause of action arose in Kisii Town.

The defendant and 3rd parties live in Kisii Town and the suit should have been filled before Kisii Principal Magistrate Court.

I have considered the application, affidavit in support and the annextures.

It is clear that the cause of action arose in Kisii. Annextures "JSAS3" a delivery Note shows that m/v Reg.No.KAG. 475X was delivered to the respondent in Kisii.

The Applicant's main office are in Kisii though he is said to have a branch office in Nairobi. Kisii Bottlers the 3rd Party is based in Kisii Town. S.15 of CPA clearly states that a suit should be filed in a court within the local limits of whose jurisdiction the defendant resides. The applicant has deponed that it is based in Kisii Town. The cause of action arose with Kisii Town. The suit should therefore have been filed before the Kisii Senior Principal Magistrates Court.

S.18 CPA grants High Court powers to Order for transfer of cases.

I therefore grant the application and Order that the case be transferred forthwith to Kisii Senior Principal Court for hearing and disposal. Costs in the cause.

Dated at Kisii this 28th day of April 2005
KABURU BAUNI
JUDGE
Mr. Nyachae for Mr. Ochillo for Applicant.
KABURU BAUNI
JUDGE