



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**Misc Application 87 of 2005**

**SHEKA OCHOLA .....APPELLANT**

**VERSUS**

**SAMSON MONGERI**

**t/a AGEL GENERAL ENTERPRISES .....RESPONDENT**

**R U L I N G**

By notice of motion dated 23rd March, 2005 Sheilla Ochola seeks an order for transfer of Kisumu CMCC No.977 of 2002 to Oyugis, Senior Resident Magistrate's Court for hearing and disposal. The ground advanced in support of the application are that the parties to the suit ordinarily resident at Oyugis; that it is expensive and time consuming for the parties to travel all the way from Oyugis to Kisumu to attend court sessions; that the transfer is for the convenience of the parties and no party will be prejudiced by it.

The grounds filed by the respondent contains Kisumu Chief Magistrate's Court does not have jurisdiction to entertain the suit there could be no transfer of what is a nullity as there was no suit. However, when the application came up for hearing the counsel for the respondent did not attend the court. In the circumstances the submissions made by the counsel for the applicant stand unchallenged. I would therefore order that Kisumu CMCC No.977 of 2002 be transferred to Oyugis Senior Resident Magistrate's Court. The applicant will have the costs of this application.

**Dated and delivered this 29th July, 2005.**

**B. K. TANUI**

**J U D G E**

**In the presence of:**

**Mr. Olago-Aluoch for applicant**

**Mr. Musomba for respondent**

**B. K. TANUI**

**J U D G E**