



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**MISC CIV APPLI 94 OF 2005**

**BEATRICE AWINO ODENDO ..... PLAINTIFF**

**-VERSUS-**

**KONOIKE VEIDEKKE MURRAY & ROBERTS**

**J.V SONDU MIRIU HYDRO POWER PROJECT ..... RESPONDENT**

**R U L I N G**

This is an application for a transfer of Kisumu CMCC No. 136 of 2004 to this court for hearing and final determination. The application is brought under Section 18 of the Civil Procedure Act and is supported by an affidavit of Abuta Tom, the applicant's counsel. The application is opposed by the respondent who contends that this Court has no jurisdiction to transfer the case as prayed.

It is not in dispute that the only reason why this transfer is sought is that the chief Magistrate's Court does not have the pecuniary jurisdiction to award amount of damages which the plaintiff seeks. The opposition to the application is based on the principle that an order for the transfer of a suit from one Court to another cannot be made unless the suit has been in the first instance brought to a Court which has jurisdiction to try it. A reliance was placed on the decision of the late *Sir Udo Udoma CJ* of Uganda in the case of *Kagenyi -versus- Musinamo and Another [1968] EA 43*. The relevant facts in that case were that a suit was instituted at Bukoto Kabula Court seeking a recovery of 60 head of cattle valued at between Kshs 500/= and Kshs 150/= per head which brought the total value to Kshs 10,000/= which value was far beyond the pecuniary jurisdiction of the Magistrate's Court. That is not the position in this case. The Chief Magistrate's Court has a jurisdiction to try the present case. All the plaintiffs proposes is to transfer the case to this Court so that they would be paid more compensation for general damages that they would get at the Chief Magistrate's Court. The Chief Magistrate's Court has jurisdiction to try the case. I therefore, find that the objection to the application is not valid.

The usual considerations when the issue of transfer of suits come up are the question of expenses of parties and witnesses, interests of justice. The questions of undue hardships and balance of convenience do not arise in this case as both the Chief Magistrate and the High Court are situated in the same premises.

Taking into consideration all these matters, I would exercise my discretion in favour of the transfer sought. The Kisumu CMCC No. 136 of 2004 is therefore withdrawn to be tried by this Court. Costs to be costs in the cause.

Dated and delivered at Kisumu this 22<sup>nd</sup> day of July, 2005.

**B. K. TANUI**

**JUDGE**

In the presence of: Mr. Abuta for applicant

Mr. K'opot for Tuiyot for respondent

**B. K. TANUI**

**JUDGE**

*BK/hao*