

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Misc Civ Appli 575 of 2005

**MILLING CORPORATION OF (K) LTD.....PLAINTIFF/RESPONDENT
VERSUS**

RULING

The defendant by way of this Notice of Motion seeks Orders that NAKURU CMCC NO. 505 OF 2005 be transferred to Chief Magistrate's Court in Nairobi for hearing and final disposal. The application is expressed to be brought under Sections 18 and 3A of the Civil Procedure Act and is premised on the ground that the defendant resides in Nairobi, the cause of action arose in Nairobi and that all the witness reside in Nairobi.

The application is opposed by the plaintiff on the ground that the cause of action arose in Nakuru.

Section 18 of the Civil Procedure Act give the High Court power to transfer cases instituted in subordinate courts. It provides "18 (1)". The High court may at any stage:

(b) Withdraw any suit or other proceeding pending in any court subordinate to it and thereafter

(i)

(ii) Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same.

The suit intended to be transferred was filed in the Chief Magistrates' Court Nakuru which is subordinate to the High Curt Nakuru and not in Nairobi or any other High court for that matter. The defendants' application is therefore dismissed with costs to the plaintiff.

Delivered and dated at Nairobi this 14th day of July 2005.

**J.L.A. OSIEMO
JUDGE**