

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Civil Case 196 of 1996

ATHI STORES LTD. PLAINTIFF

VERSUS

KENYA AGRICULTURAL RESEARCH INSTITUTE

ELIUD MUHIS GICHUKI DEFENDANTS

R U L I N G

The plaintiff/applicant seeks an order of transfer of this suit to the Chief Magistrate's Court, Milimani, for hearing and determination and that the costs be in the cause. The reasons for the transfer are that the Chief Magistrate's Court, Milimani, has the pecuniary jurisdiction which it did not have at the time the suit was filed; that the plaintiff conducts business in Nairobi and so, that court has jurisdiction; that the matter will be heard and determined fast. The application is also supported by the affidavit of Virginia Shaw, counsel for the applicant.

Though served with the application and Hearing Notice, the Respondents never filed any papers in opposition to this application nor did they attend the hearing. The hearing proceeded ex parte.

Under Section 15, Civil Procedure Act, the plaintiff has to file a suit in a court within the local limits of whose jurisdiction the defendant or each of the defendants at the time of commencement of the suit, actually or voluntarily resides or carries on business or unless with the leave of the court a suit can be filed in another court or where the cause of action wholly or in part arises. In this case, the plaintiff is suggesting that the suit be moved to Chief Magistrate's Court, Milimani, to the plaintiff's convenience which is not the proper consideration.

From the plaint, it is apparent that the cause of action arose near Athi- River. I believe that the cause of action arose within the local limits of Chief Magistrate's Court at Machakos. However, at paragraph 3 of the plaint, it is pleaded that the 2nd defendant works in Nairobi and the 1st Defendant has its registered office in Nairobi too. It means that this suit could either have been filed in Nairobi or Machakos. Before this court can order the transfer of a suit from one court to another, it has to be established that the court in which the suit was filed had jurisdiction to try it in the first place. This court has unlimited jurisdiction and the case could also have been filed at Chief Magistrate's Court, Machakos, which has jurisdiction but since the first defendant's offices are in Nairobi, and 2nd defendant works in Nairobi, the suit can be transferred to Milimani Chief Magistrate's Court for hearing and disposal and the court so orders.

Costs to be in the cause.

R.V. WENDOH

JUDGE

Dated at Machakos this 17th day of August 2005

Read and delivered in the presence of

R.V. WENDOH

JUDGE