



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL DIVISION, MILIMANI**  
**Misc civ Suit 277 of 2005**

**CHARLES OJWANG T/A**  
**BRAKE POINT SERVICE STATION.....PLAINTIFF/RESPONDENT**  
**VERSUS**  
**FUELEX KENYA LIMITED.....DEFENDANT/APPLICANT**

**R U L I N G**

The defendant has moved the court by Notice of Motion dated 19th April 2005 brought under Sections 3, 3A, 15 and 18 of the Civil Procedure Act and Order L Rules 1, 2 and 3 of the Civil Procedure Rules.

The prayer sought by the defendant was that:

**“Winam SRMCC No. 697 of 2004 Charles Ojwang T/A Brake Point Service Station – vs – Fuelex Kenya Limited pending for hearing before the Senior Resident Magistrate’s Court at Winam be withdrawn and transferred to the Chief Magistrate’s court at Milimani, Nairobi for hearing and final determination.”**

The application is grounded on the following grounds: -

- (1) That the defendant, in the Senior Resident Magistrate’s court case at Winam, has its principal place of business in Nairobi.
- (2) That the case ought to have been instituted in Nairobi.
- (3) That the Senior Resident Magistrate’s court at Winam lacks pecuniary and geographic jurisdiction.

The application’s counsel deposed in the supporting affidavit that the defendant applicant, filed a counter claim in the Senior Magistrate’s Court at Winam, for an amount of kshs 1, 080, 600/- which amount exceeds the jurisdiction of that court.

The plaintiff respondent’s advocate was served with hearing notice, but when the application came up for hearing on 2nd November 2005, counsel for the plaintiff did not attend court.

I have considered the application before court and the grounds of opposition filed by the plaintiff’s counsel. I find that the application is merited and accordingly grant the following orders: -

- (1) That Winam SRMCC No. 697 of 2004; CHARLES OJWANG T/A BRAKE POINT SERVICE STATION – VS – FUELEX KENYA LIMITED be and hereby is transferred from the Senior Resident Magistrate’s court at Winam to the chief Magistrate’s court at Milimani Commercial Courts, Nairobi for hearing and final determination.**
- (2) That costs of the application dated 19th April 2005, hereof, be in cause of SRMCC No. 697 of 2004 Winam Court.**

Dated and delivered this 24th day of November 2005.

**MARY KASANGO**

**JUDGE**