



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISC. CIVIL APPLICATION NO. 1404 OF 2003**

**FARMERS CHOICE LIMITED.....APPLICANT**

**VERSUS**

**MARTIN M. MUTUNGA .....RESPONDENT**

**R U L I N G**

1. The issue here is whether Mombasa *PMCC NO. 2928 of 2002, Martin Mutunga vs. Farmers Choice Limited* should be transferred to the Chief Magistrate's Court, Milimani for hearing and determination.
2. The Plaintiff in that suit resides in Mombasa and previously worked in the same place for the Applicant (the Defendant in the lower court). The Applicant on the other hand, has its headquarters in Kahawa, off Kamiti Road, Nairobi and it says that all its witnesses are also in Nairobi. It also claims that the contract, subject of that suit was executed in Nairobi and therefore the same ought to be adjudicated upon in Nairobi.
3. The Respondent in the instant Application claims that he executed his acceptance to be employed by the Applicant at the Nyali Beach Hotel, Mombasa. The cause of action arose there. He also says that he worked in Mombasa throughout his employment and he had an office there. He exhibited his business card indicating that he was the Applicant's Coast Salesman and he was based at the "*Mombasa Office, P. O. Box 34060, Tel (011) 471303/309, Fax (011) 486276.*"
4. In his view the matter ought to be concluded in Mombasa.
5. I have read the Application and the response to it. I note that Section 14 of the Civil Procedure Act allows the Plaintiff the option of choosing to sue where the Defendant commits an act within the jurisdiction of one court, in that court, but where the Defendant resides in another, he can also sue there. I have no way of telling where the contract of employment was signed, what with the parties saying the opposite of each other on the issue. However, I am certain that the Applicant has an office in Mombasa based on what I gathered from the Respondents Replying Affidavit and the Applicant's counsel's submissions. That being the case, Section 15 (c) explanation (2) allows a suit to be filed where a corporation has a subordinate place. The Mombasa office of the Applicant is such an office.
6. As the Respondent is not agreeable to the transfer, I see no basis for disturbing his suit. The Applicant should claim any attendant costs if at all depending on the outcome of the suit, after due hearing.
7. I hereby dismiss the Application dated 10th November 2003. I shall however make no orders as to costs.

**Dated and delivered at Nairobi this 13th day of February 2004**

**I. LENAOLA**

**Ag. JUDGE**

**13.2.2004**

**Before Lenaola Ag. J.**

**Amos CC**

**Ruling read in the presence of:**

**Mwangi holding brief for Mwicigi for the Applicant**

**No appearance for the Respondent**

**I. LENAOLA**

**Ag. JUDGE**