

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL CASE NO. 272 OF 2001

GRANDWAYS VENTURES LIMITED ===== PLAINTIFF
-VERSUS

RELIANCE BANK LTD (IN LIQUIDATION)
SOUTHERN CREDIT FINANCE BANK ===== DEFENDANT

R U L I N G

In this motion on notice dated 12th March 2004 the defendants seek an order of this Court that the proper place for trial of it is Nairobi. The application is indicated to be brought under Order XLVI rule 5 (1) and (2) of Civil Procedure rules and Section 3A and 12 of Civil Procedure Act; and is supported by some grounds on the body of the motion. The plaintiff opposes the application relying on some grounds of opposition filed on its behalf on 19th April, 2004.

The issue before me is whether this Court has jurisdiction in its direction to order that this case can be heard in Nairobi instead of Kisumu where it was filed in 1997 as sought by the defendants. As indicated above the defendants cited Order XLVI rule 5 as conferring this Court jurisdiction.

The defendants rely on the decision of P. N. Waki J (as he then was) in Mombasa HCCC no. 477 of 1998 – Jazira Agencies Nairobi Ltd –Vs- Dolphins Stationers Ltd where he ordered that the case be transferred to Nairobi High Court Registry from Mombasa Registry. However, the plaintiff in opposing the application relied on the decision of Onyango Otieno J. (as he then was) in **High Court at Nairobi Milimani Misc. Civil Application no. 40 of 2000 – Guardian Bank Ltd -vs- Norlake Investments Ltd** where the learned Judge after reviewing Sections 12, 15 and 17 of Civil Procedure Act and Order XLVI rule 5 of Civil Procedure Rules declined to transfer a case from Kisumu High Court Registry to Nairobi High Court Registry as prayed.

I have carefully perused the rulings of the two Judges and am alive of the fact that they are only of persuasive authority. However, I agree entirely with the views of Onyango Otieno J. (as he was) expressed in the said ruling. I therefore dismiss the application with costs.

Dated and delivered this 24th May, 2004.

B. K. TANUI

JUDGE