



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**MISC. APPLICATION NO.85 OF 2008**

**SOUTH SUIOX FARM LTD.....APPLICANT**

**VERSUS**

**BENSON M. WEFWAFWA.....RESPONDENT**

**RULING**

1. Before Court is an application dated 14<sup>th</sup> April 2008 filed 9 years ago. It is not clear yet why the application took too long to be canvassed.
2. The said application seeks to stay the proceedings of Kimilili RMCC No.96 of 2006 and for transfer of the said case to the Chief Magistrate's Court in Eldoret.
3. Reasons for the stay and transfer are that; the accident occurred along Eldoret – Nakuru road; the defendants are based in Nairobi and Mombasa respectively; it will be expensive to have witnesses come to Kimilili and inconvenient; more than six other cases have been handled in Eldoret and one being used as a test case.
4. In opposing the application Counsel for the respondent urged that the Kimilili Court has jurisdiction to hear the matter and the applicant did initially not seem to have an issue with jurisdiction; due to the time lapse the applicant is estopped from raising the matter now; the test case has been determined against the applicant; and the judgement in the Kimilili matter remains as the conditions set by the trial Court have not been met.
5. In a reply to the affidavit in opposition Counsel for the applicant's gives details of how an Ex parte judgement was obtained against his client.
6. The issue before Court is whether or not to transfer the suit from Kimilili to Eldoret on the face of an existing judgement and which judgement was only to be set aside upon fulfilment of certain conditions.
7. The issue of jurisdiction of Magistrates' Court in view of Section 15 of the Civil Procedure Act and Section 3(2) of the Magistrates Act Cap.10 has been a subject of discussion in many cases.

I will align myself with the decision of **Ringera J** in **Mohammed Sitaban vs George Mwangi Kariuki CA No.13/2012** where he stated as follows;

***“Section 3(2) of the Magistrate's Court Act provides that a Court of the Resident Magistrate (which is defined to include a Senior Principal Magistrate's Court) has jurisdiction throughout Kenya. Such a Court is not the subject of the local jurisdiction contemplated by Section 15 of the Civil Procedure Act. In my opinion Section 15 of the Civil Procedure Act applied only to Courts lower than the Resident Magistrates' Court. I am fortified in that view by the fact that the Magistrates Court Act, Cap 10 of the Laws of Kenya, was enacted in 1967 long after the Civil Procedure Act. The Legislature was therefore aware of the Provisions of section 15 of the Civil Procedure Act and the hallowed Rule of Statutory construction that where two Provisions in a different statutes conflict, the provisions in the latter statute is deemed to amend the earlier provision must be applied. Accordingly, I find that the Bungoma Court had Jurisdiction to entertain the suit and the rule that suit filed in a Court without jurisdiction is a nullity and***

***cannot be transferred is in applicable in the circumstances of this case. There may be sound administrative reasons for filing suits in administrative Districts in which the defendant resides or the cause of action but those reasons cannot oust the statutory jurisdiction”.***

**8.** Ordinarily a Court would be inclined to transfer a case to where the accident occurred or the defendant resides for convenience. However in the current case the Kimilili Court entered judgement, an application was made to review / set aside the same, and a conditional order made way on the 16<sup>th</sup> of May, 2011 which order required compliance within 2 months. The said order setting aside in my view lapsed after the 2 months. Secondly since the order was not complied with the judgement remained in force.

**9.** I am therefore inclined to agree with the respondent that this matter having been concluded, it is not capable of being transferred as the transfer will serve no purpose.

**10.** Consequently the application is dismissed with costs.

**DATED and DELIVERED at BUNGOMA this 4<sup>th</sup> day of May 2017**

**ALI-ARONI**

**JUDGE**