



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Miscellaneous Civil Application 90 of 2008

EMILY CHEPKOECH CHEPKWONY.....APPLICANT

(Suing a personal representative of Fredrick Kiprotich Deceased)

Versus

JAMES FINLAY (K) LTD.....RESPONDENT

RULING

This application seeks transfer of Kisii CMCC No. 552 of 2006 to the Principal Magistrate's Court at Kericho for hearing and disposal. The application is based on the grounds that:

- 1. the cause of action arose along Kericho – Chebangang Road as a result of a road traffic accident, which is within the geographical jurisdiction of Kericho.**
- 2. that at the time of filling the suit the applicant was not certain of the pecuniary jurisdiction of Kericho Courts.**
- 3. that the defendant is based at Kericho and it will be economical to avail the witnesses to testify at Kericho.**

The application is opposed on the following grounds:

- 1. that the application is incomplete, misconceived and bad in law.**
- 2. the order sought cannot issue as the suit was instituted in the first instance in a court that lacks jurisdiction hence there is no suit to be transferred.**
- 3. the application is an abuse of the court process.**
- 4. the application is an afterthought belated with malice.**

I have considered brief submissions that were made by Mr. Nyagosi for the applicant and Mr. Songok for the respondent. Section 3(2) of the Magistrate's Court Act provides that a court of the resident magistrate, that is, all resident magistrate's courts of whatever rank except the District magistrate's court, has jurisdiction throughout Kenya. That notwithstanding, appropriate station in which a case ought to be filed is determined by the provisions of **Section 15** of the Civil Procedure Act. A suit should be instituted within the local limits of whose jurisdiction-

- a. the defendant resides or carries on business or works for gain; or**
- b. where the cause of action wholly or partially arises.**

No doubt the suit now sought to be transferred ought to have been filed at Kericho and not at Kisii law courts. The plaintiff's advocate cannot argue that he was not certain of the pecuniary jurisdiction of Kericho courts. An advocate is

presumed to know the pecuniary jurisdiction of all magistrates' courts and if he was in doubt for any reason, he ought to have enquired. I do not therefore accept that there was a good reason for filing the case at the Chief Magistrate's Court at Kisii in the first place.

But having said that, it is not correct that the Chief's Magistrate's Court at Kisii does not have jurisdiction to hear and determine the case.

If the case had been filed before a court which had no statutory jurisdiction, it cannot be transferred to any other court because the suit would be incompetent in any event. But that is not the case here.

The respondent has not argued that it will suffer any prejudice if the case is transferred to Kericho as prayed. It was not contented, for example, that several witnesses have so far testified and the proposed transfer, if granted, will delay finalization of the case. I do not think the application is an abuse of the court process as alleged.

Consequently, I allow the plaintiff's application and order that Kisii CMCC 552 of 2006 be and is hereby withdrawn from the Chief Magistrate's Court at Kisii and transferred to the Senior Principal Magistrate's Court at Kericho for hearing and disposal. The applicant will bear the costs of this application.

DATED, SIGNED AND DELIVERED at Kisii this 9th day of July, 2009.

D. MUSINGA

JUDGE.

9/7/2009

Before D. Musinga. J

Mobisa – C.c

Mr. Ogwen holding brief for Mr. Nyangosi for the Applicant.

Mr. Otieno holding brief for Mr. Tuiyoti for the Respondent.

Court: Ruling delivered in open court on 9th July, 2009.

D. MUSINGA

JUDGE.