

REPUBLIC OF KENYA

Industrial Court of Kenya

Civil Miscellaneous Application of

SYLVESTER KIOKO MAITHA.....**APPLICANT**

VERSUS

1. THE COMMISSIONER OF POLICE

2. THE HON. ATTORNEY GENERAL.....**RESPONDENTS**

RULING

1. The Application before me is the one dated 10th April 2013 seeking to transfer a suit pending before the Magistrates court Nairobi being Civil Suit No. 12265 of 2006 for hearing and determination.

2. The Application was unopposed and the Court has had to review the pleadings filed to arrive at this decision.

3. The principles a Court has to consider before making a determination of this nature is whether there was jurisdiction in the first instance. In the event there was none, I would not be able to transfer that which does not exist as there is no suit so to speak.

4. I am minded that the suit was filed in 2006, the entities sued in the Magistrates Court existed then as per the Plaint but in this Application, the Commissioner of Police is made a party and there is nothing to suggest that he should have been included. I therefore strike out his name. In order not to obstruct or delay the course of justice I order the Claimant's counsel to file an amended Notice of Motion without ado so as to enable the Court to proceed to hear the Application on a date to be fixed after this Ruling.

It is so ordered.

Dated and delivered at Nairobi this **21st** day of **May** 2013

Hon. Mr. Justice Nzioki wa Makau

Judge