



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

MISC. APPLICATION NO. 18 OF 2019

FATUMA ATHUMAN KOMBO

MWINYI NZAZU (Suing in their capacity as to be Administrator of the Estate of

SALIM NZAGU BAKARI vide Succession Cause No. 160 of 2018APPLICANT

VERSUS

MIKE KAINGU KAZUNGU..... 1ST RESPONDENT

R. M. TINDIKA T/A TINDIKA & COMPANY ADVOCATES 2ND RESPONDENT

FELIX AYUYA MIDIKIRA T/A MIDIKIRA & COMPANY ADVOCATES....3RD RESPONDENT

THE REGISTRAR OF TITLES - MOMBASA 4TH RESPONDENT

CORAM: Hon. Justice R. Nyakundi

Onyango Onunga Advocates for the applicant

R. M. Tindika Advocates for the respondent

RULING

This notice of motion was filed on 24.6.2019 under Section 18 (1) and (11), Section 3A of the Civil Procedure Act, Order 51 of the Civil Procedure Rules for orders that:

This honorable court be pleased to order transfer of CMCC NO. 8 OF 2019 from the Chief Magistrate Court, Kilifi to the High Court Malindi for purposes of recording a consent.

In summary the applicant counsel deponed in the affidavit the suit in Cause No. 8 of 2019 has been compromised by the parties reaching an agreement dated 31.1.2019 qualifying the value of the suit property at Kshs.22,000,000/= which is way beyond the monetary jurisdiction of Kilifi Magistrate Court.

That a careful examination of the provisions of the Law by that agreement the initial jurisdiction of the court is therefore ousted.

That in reference to the agreement, it is evident that the suit ought to be transferred to the High Court for adoption of the consent. It is the respondents case through the grounds of opposition that the application is incompetent, bad in Law and otherwise an abuse of the court process. That if the **CMCC NO. 8 OF 2019** to the Law with regard to jurisdiction of Magistrate Court is provided for Under Section 7 of the Magistrate Court Act 2015 specifically it provides as follows:

1). A Magistrate's Court shall have and exercise jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed

(a). Twenty Million Shillings, where the court is presided over by a Chief Magistrate.

- (b). Fifteen Million Shillings, where the court is presided over by a Senior Principal Magistrate.
- (c). Ten Million Shillings, where the court is presided over by a Principal Magistrate.
- (d). Seven Million Shillings, where the court is presided over by a Senior Resident Magistrate.
- (e). Five Million Shilling, where the court is presided over by a Resident Magistrate.

In the instant application, the grounds for seeking transfer of suit can be summarized from the affidavit of **Jane Akinyi Onyango**. That on the basis of the agreement, the sale price of the plot marked **JAO – 1 clause No. 3** of the conditions of sale is pegged at Kshs.20,000,000/=.

The respondent strenuously opposed this prayer on transfer arguing that this court has no jurisdiction to grant the prayer on the basis that there is nothing to transfer as provided under Section 19 of the Civil Procedure Act.

It is however important to observe that in the midst of the computing interest between the parties, one of them is impugning the agreement and its intermittent value of Kshs.20,000,000/= which appears to be underlying the issue in the notice of motion.

To my mind, the court in Kilifi is presided over by a Senior Principal Magistrate. The jurisdiction under Section 7 of the Act for a Senior Principal Magistrate is stated to be Kshs.15,000,000/= way far below the value of Kshs.20,000,000/= of the agreement proposed to be recorded and adopted as a court order. To ascribe a contrary interpretation would render meaningless the prescribed civil jurisdiction of that court.

From the plain facts in the annexed agreement, I refuse to transfer the suit to this court as the agreement is premised within the civil jurisdiction of a Magistrate Court.

Therefore, in exercising the inherent jurisdiction in terms of Section 3 and 3A of the Civil Procedure Act, to grant this relief of transfer to Malindi Chief Magistrate Court to ensure that the imperative need to see the ends of justice is secure in the matter. It follows therefore the respondent preliminary objection is dismissed and the notice of motion dated 24.6.2019 allowed with a variation that the transfer of **SPMCC NO. 8 OF 2019** be effected instead to Malindi Chief Magistrate Court for determination from such state of affairs.

I make no orders as costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 20TH DAY OF FEBRUARY 2020

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R. NYAKUNDI

JUDGE