



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CIVIL MISC. APPLICATION NO. 66 OF 2017

CATHERINE NGINA NGELU.....APPLICANT

VERSUS

MUTUKU KASOA.....RESPONDENT

R U L I N G

1. In the application dated the 3rd day of **October, 2017** the Applicant, **Catherine Ngina Ngelu** seeks this Courts order transferring **Civil Suit No. 520 of 2016** from Kitui Chief Magistrate's Court to Mutomo Senior Principal Magistrate's Court for trial and disposal.
2. The application is premised on grounds that both the Applicant and Respondent reside at **Mathima Location** within **Mutomo Sub-county**; it would cause great inconvenience, hardship and expense to the Applicant if the suit is heard in Kitui which is approximately **90 kilometres** from Mutomo Area; the Respondent shall not be prejudiced by the order sought.
3. Counsel for the Applicant **Mr. Erick M. Keli** swore an affidavit in support of the Application where he deposed that the Applicant had instructed her former Advocate to file the case at Mutomo Law Courts but she was surprised to find that it was filed at Kitui Law Courts which will cause her great inconvenience, economic hardship and expense as both of them are domiciled in Mutomo.
4. The Respondent who was duly served with the application failed and/or neglected to file a response. Therefore the averments of the Applicant stand unchallenged.
5. The suit herein ought to have been instituted in a Court of the lowest grade competent to hear it. **(See Section 11 of the Civil Procedure Act)**. Both the Defendant and Plaintiff reside in Mutomo. Therefore the Court best placed to try them is Mutomo Senior Principal Magistrate's Court.
6. **Section 18(1)(a)** of the **Civil Procedure Act** provides thus:

“(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or.”

The Court at Mutomo is competent to try the suit, therefore I allow the Applicant's application and direct as follows:

I. Kitui Chief Magistrate's **Civil Suit No. 520 of 2016** be and is hereby transferred to Mutomo Senior Principal Magistrate's Court, for trial and disposal.

II. Costs of the application shall be in the cause.

7. It is so ordered.

Dated, Signed and Delivered at Kitui this 27th day of February, 2018.

L. N. MUTENDE

JUDGE