



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**MISC. APPLICATION NO. 28 OF 2013**

**GEDION MBAABU M'ARITHI & 5 OTHERS.....APPLICANT**

**VERSUS**

**CLEMENT M'RUKUNGA.....1ST RESPONDENT**

**H. ON LEMANTILI.....2ND RESPONDENT**

**WILSON KINYUA MUTAI.....3RD RESPONDENT**

**RULING**

This application, stated to have been brought under Order 18 (1) b(1) of the Civil Procedure Act, seeks orders that:-

***A. The Honourable Court be pleased to transfer CMCC No. 187 of 2011 from CHIEF MAGISTRATE'S COURT AT MERU to the ENRIRONMENT AND LAND COURT AT MERU for hearing and determination.***

***B. Costs of the application.***

The application is supported by the affidavit of **GEDION MBAABU M'ARITHI** and the following grounds:

***A. The dispute in the lower court relates to land.***

***B. The Chief Magistrate at Meru has no pecuniary jurisdiction to hear this matter.***

***C. That the matter can be resolved conveniently in the Environment and Land Court.***

When the application was heard on 8.5.2015, Mr. Kimathi Kiara for the Plaintiffs/Applicants told the court that he wanted the application to be allowed as it had not been responded to. He told the Court that he had filed the suit in the CM's Court in 2011 as there was no Environment and Land Court.

Mrs Kaume said she was opposing the application on a point of law. She told the court that she had raised a Preliminary Objection in the Lower Court seeking the dismissal of the suit. She argued that if as stated by the applicant, the Lower Court had no jurisdiction, it then followed that the suit in the lower

court was non-existent and was, therefore, non-transferable. She advised the Plaintiffs/Applicants to withdraw the suit in the Lower Court and pay the respondents costs.

I do note that the application seeks the transfer of the apposite suit to this Court. It does not as envisaged by section 18(b) of the Civil Procedure Act, seek the suit to be withdrawn from the Lower Court upon which withdrawal the Court would act in accordance with section 18 (b) (i) (ii) of the Civil Procedure Act.

I do note that this suit has been pending in the Chief Magistrate's Court since 2011. It is suspicious that 4 years down the line, the Applicants have suddenly discerned the need to have it heard by this Court.

The affidavit supporting the application states that on 7.5.2015, the Presiding Magistrate in the Lower Court declined to hear the suit after citing lack of jurisdiction. The ruling or other evidence regarding the refusal of the trial magistrate to hear the suit has not been annexed. Without adducing any proof in evidence, the applicant in paragraph 6 of Gedion Mbaabu M'Arithi's supporting affidavit merely avers that the suit land has a value of Kshs.30,000,000/=

Having considered the averments of the parties and their submissions, I find that the applicants have not shown to the satisfaction of this Court that the application should succeed. In the circumstances, the application is dismissed.

Costs of the application are awarded to the respondents.

It is so ordered.

**Delivered in Open Court at Meru this 18th day of June, 2015 in the presence of:**

Cc Lilian/Daniel

Harun Gitonga h/b Kimathi Kiara for Plaintiff

**P. M. NJOROGE**

**JUDGE**