



No. 281/14

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

DIVORCE CAUSE NO. 5^B OF 2011

C O W.....PETITIONER/APPLICANT

VERSUS

N A M.....RESPONDENT

RULING

1. The application dated **30th September 2013** is for transfer of **Divorce Cause No. 5 of 2011** from the **High Court** to the **Subordinate Court**. It is premised on grounds that the Lower Court has jurisdiction to determine the cause and the respondent shall suffer no prejudice if the matter is transferred to the Lower Court.
2. The application is supported by an affidavit deponed by **Rachel Amala**, an advocate of the High Court who is in conduct of the matter on behalf of the applicant who deposes that the case was inadvertently filed at the High Court and it will be in the interest of justice to have the matter heard in the Subordinate Court.
3. The application is unopposed.
4. **Paragraph 1** of the Petition stipulates thus:-

“That, the Petitioner C.O.W. Sometimes on 2nd February, 1991 solemnized their marriage with the Respondent N.C.M at Machakos DCs Office within the Republic of Kenya”.

5. A marriage solemnized by a **District Commissioner** would ordinarily be celebrated and registered pursuant to the provisions of the **Marriage Act, Cap 150** of the **Laws of Kenya**. The Lower Court lacks jurisdiction to hear a cause where the marriage was solemnized under the **Marriage Act. (See JSM versus DIS Nairobi (Milimani) Divorce Cause No. 167 of 2011)**. The jurisdiction resides with the High Court.
6. In the premises the application is dismissed. Due process of law shall be followed and the cause shall be set down for hearing on priority basis.
7. It is so ordered.

DATED, SIGNED and DELIVERED this 19TH day of MAY, 2014.

L.N. MUTENDE

JUDGE