

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISC. APPLICATION NO.58 OF 2013

JOSECK OKUMU BARASA APPLICANT

V E R S U S

SAMUEL GACHIGI KARANGA 1ST RESPONDENT

ROBERT BOB BARASA 2ND RESPONDENT

R U L I N G

The application dated 25.6.2013 seeks to have Mumias Court file no. SPMCC.107 of 2013 transferred to Kakamega Chief Magistrate's Court for hearing and final determination. The application is supported by the applicant's affidavit. The 1st respondent swore a replying affidavit on the 30.7.2013. Parties relied on their respective pleadings.

The applicant contends that he made an application to be enjoined in the suit before the Mumias Court. He is apprehensive that the Mumias Court may not be fair because the 2nd respondent who is his brother has been bragging that he will use a former clerk to the court by the name **JAMES MOSE** to ensure that he wins. The clerk is now based at the Butere Court. The respondent maintains that Moses is not a party to the case and the subject matter is based within the jurisdiction of Mumias.

I have gone through the pleadings and note that the applicant is yet to be enjoined a party to the suit. His apprehension is not supported by any facts as it is pure hearsay. Even if the clerk is a friend to the 2nd respondent the case will not be decided by the clerk but by a magistrate. The application is misconceived and an abuse of the court process. The implication is that judicial officers are easily influenced by their clerks in determining cases. This is a misconception which should not be encouraged. The application lacks merit and is dismissed with costs.

Delivered, dated at Kakamega this 26th day of June 2014

SAID J. CHITEMBWE

J U D G E