



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CIVIL CASE 79 OF 2008**

**GERALD MUTHUYIA ..... PLAINTIFF**

**VERSUS**

**SILAS MWENDA MBUI & OTHERS ..... DEFENDANT**

**R U L I N G**

The 4<sup>th</sup> defendant Faniel Koome M’Mukiri by his application dated 21<sup>st</sup> May 2011 brought under Section 18 (1) (a) of Civil Procedure Act seeks the following orders:-

- 1. That the Honourable Court be pleased to transfer this suit for trial and disposal to Meru Chief Magistrate’s Court.**
- 2. That costs of the application be provided for.**

The application is based on the following grounds:-

- 1. That the Chief Magistrate’s Court has the jurisdiction to hear and determine the dispute between the parties herein.**
- 2. That for the expeditious disposition of the matter, the same ought to be heard in the Chief Magistrate’s Court at Meru.**

The application is supported by an affidavit of Faniel Koome M’Mukiri dated 21<sup>st</sup> May 2011. The applicant has stated that he bought L.R. No. Ntima/Ntakira/3190 and was issued with title deed on 19<sup>th</sup> June 2008. That the land was sold to the applicant by 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants. That on 20<sup>th</sup> November 2008 an order of temporary injunction was issued against the defendants restraining them from interfering with the suit property. That since 2008, the suit has not taken off for hearing for inter alia the congestion of High Court’s diary. The applicant states that he has been advised by his advocates on record that the suit can be tried and disposed of by chief magistrate’s court here at Meru. That the applicant prays the suit be transferred to enable it to be expeditiously disposed off since the chief magistrate’s court has jurisdiction to hear and determine the suit. The respondent/plaintiff filed replying affidavit dated 17<sup>th</sup> June 2011 opposing the 4<sup>th</sup> applicant’s application. The respondent has averred the application is misconceived, frivolous and an abuse of the court process. The respondent aver that the High Court has

jurisdiction and it is competent enough to hear and determine the dispute expeditiously. That on or about 3<sup>rd</sup> January 2011 the respondent stated that the mother of 4<sup>th</sup> defendant one Loice Ngirii bragged and boasted and told the respondent that the defendants are well connected individuals with connections to senior Government and Judicial Officials who can help them influence the outcome of this suit. The respondent has deponed that he has reasonable belief and his fears are well founded that if this matter is transferred to magistrate's court as prayed he won't get justice and that there is a likelihood that the outcome of this matter may be influenced. He has also deponed that it is public domain and knowledge that there is a backlog of cases in the judiciary both in the High Court and subordinate courts. That the value of the subject matter is obviously beyond the jurisdiction of the chief magistrate's court. The respondent stated that he would be prejudiced if the application is allowed as prayed. The respondent prays the application be dismissed with costs as it is not made in good faith.

When the matter came up for hearing the learned advocate Mr. Mwirigi for the applicant submitted that the claim in this matter is within the preliminary jurisdiction of chief magistrate's court and the chief magistrate's court has jurisdiction to deal with issues for trial and that the matter would be expeditiously disposed off. He submitted the prayers sought as per further amended plaint dated 12.5.2009 are a declaratory in nature. The plaintiff is seeking:-

1. ***A declaration that L.R. and Ntima/Ntakira/3190 is his property.***
2. ***A declaration that defendant are holding L.R. No. Ntima/Ntakira/3190 in trust for the plaintiff.***
3. ***An order of cancellation of 4<sup>th</sup> defendant name from the register of L.R. Ntima/Ntakira/3190.***
4. ***An order that L.R. Ntima/Ntakira/1390 be registered in the name of the plaintiff and be sole proprietor thereof.***
5. ***Costs and interest.***
6. ***Any further or better relief this honourable court may deem fit or just.***

The learned counsel for applicant submitted the issue in this matter can be tried by the chief magistrate court. He submitted none of the issues in this suit are exclusively reserved for the high court. The counsel submitted the value of the suit property is not beyond Kshs. 500,000/= referring the court to agreement of sale of land dated 27<sup>th</sup> January 2008 attached to replying affidavit dated 15<sup>th</sup> July 2008. He submitted further as no prejudice would be suffered by the respondent the application ought to be granted. The learned advocate for the respondent Mr. Rimita opposed the application vigorously. He relied on the respondent's affidavit dated 17<sup>th</sup> June 2011. He submitted that the applicant's supportive affidavit is scanty and do not supply sufficient material to show that the matter can be tried by the chief magistrate. That no valuation report has been attached to the affidavit showing the actual value of the property. He submitted the suit property is within the Municipal Council of Meru and is registered land under the Registered Land Act. He submitted that under Section 159 of the Registered Land Act chief magistrate court has no jurisdiction to hear and determine a matter under Registered land Act, if the value of the subject matter exceeds Kshs. 500,000/=. He submitted that it was argued by the applicant the land was bought on 27<sup>th</sup> May 2008 at Kshs. 500,000/= and as of now the value must clearly be above Kshs. 500,000/=. He further submitted that prayers in the further amended plaint are basically on breach of trust and is a matter for High Court. That the application is an afterthought as it was made after an inter parties hearing of an injunction application for variation of injunction orders which was rejected. That the respondent counsel urged the court not to transfer the matter to lower court, stating the respondent has expressed his fears if the matter is transferred to lower court. He further submitted that there is no guarantee an early hearing date would be given at the lower court. The learned counsel for applicant in his reply submitted that the value of such property is within the jurisdiction of chief magistrate's court. He further submitted the application is not an afterthought as Section 18 of Civil Procedure Act do not set down time limit within which the application can be brought to court. Under Section 18 (1) (a) of the Civil Procedure Act it is provided:-

**“18. (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.”**

which the application can be filed; however the application must be filed before both the plaintiff and defendant have adduced their evidence and closed their case. The High Court can only transfer a suit pending before it for trial or disposal to a subordinate court with jurisdiction to hear and determine the matter. Under Section 159 of the Registered Land Act it is provided:-

**“159. Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate’s Court, or, where the dispute comes within the provisions of section 3 (1) of the Land Disputes Tribunals Act in accordance with that Act.”**

In view of the above mentioned Section chief magistrate court can only deal with an issue related to land whose value do not exceed Kshs. 500,000/=.The issue now before this court is; is the value of the suit property herein within the pecuniary jurisdiction of chief magistrate’s court?

The applicant’s affidavit in support of the application for transfer of the suit to chief magistrate’s court is scanty and insufficient in relevant material facts. The applicant has deliberately failed to indicate the value of the suit property. The applicant is referring to annexure of agreement of sale in a different affidavit which is not annexed to his present affidavit. The value of the property is said to have been Kshs. 500,000/= three years ago. The value of properties in this country and I believe also the world all over is not static. The value of land in this country appreciates now and then. The value of the suit property must have appreciated by some margin whether small or big and that appreciation even if it was by a cent, it must have pushed the value of suit property from Kshs. 500,000/= to a higher figure which means chief magistrate court has no jurisdiction to try and determine this matter as the value has gone beyond Kshs. 500,000/=. I do not agree that today the value of the suit property is still Kshs. 500,000/=. Whatever the value now, I must say, it is beyond the jurisdiction of chief magistrate’s court. The burden of proof on value that the value of suit property is within the jurisdiction of chief magistrate is on the applicant. The applicant has failed to prove that value of suit property is Kshs. 500,000/= by attaching valuation report. The applicant has not proved that the issues raised in the pleadings of the breach of trust are issues that can be tried and determined by chief magistrate court.

In the view of the findings, I am not satisfied that the chief magistrate’s court is competent to try and dispose of this suit. I therefore decline to transfer this suit to chief magistrate’s court at Meru for trial and disposal. The application is therefore dismissed with costs to the respondent.

**Dated at Meru this 15<sup>th</sup> day of March 2012.**

**J.A. MAKAU  
JUDGE**

**Delivered in open court in the presence of:-**

Miss Kiome h/b

Mrs. Mwirigi Adv for the Applicant

Mr. Munene h/b for Mr./ Rimita for Respondent

**J.A. MAKAU**  
**JUDGE**