



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Civil Application 380 of 2012

Editorial Summary

1. *Civil application*
2. *Subject of Subordinate Court Case*

LAND

2.1 *Land buying company.*

2.2 *Land ownership*

portion of Nairobi/block/113/153

2.3 *Suit filed in magistrate's court on*

27th February 2007.

3. *Application dated 4th July 2012*

3.1 *That CMCC 1508/07 be transferred from the*

Chief Magistrate's Court Nairobi to

High Court at Milimani ELC Division

for hearing and final determination.

3.2 *Reasons:*

i) *Claim for land under the Registered*

Lands Act Cap 300 worth in excess

of 3 million.

ii) *Only the High Court – a court of competent*

jurisdiction which can try matter.

iii) *Interest of jurisdiction.*

4. *Held:*

4.1 *Where the subordinate court lacks jurisdiction
the suit cannot be transferred.*

4.2 *Application dismissed.*

5. *Statute Law:*

*Civil Procedure Act
Section 18
Order 12 r 2(3) Civil Procedure Rules.*

6. *Case Law:*

*Kagenyi – Vs – Musiramo & Another
(1968) EA 43*

7. *Advocates :*

i) *J.M. Mwangi instructed by M/s Irungu Mwangi Nganga T.T. & Co Advocates for applicant present*

ii) *E.N. Njue instructed by M/s E.N. Njue & Co Advocates for respondent – absent*

iii) *1st and 2nd respondent absent*

ESTHER NYATHIRA
... APPLICANT

VERSUS

LUCKY SUMMER ESTATE CO. LTD

STEPHEN RUTO IYOBA

JANE TALLAM

MERCY NYAMBURA RESPONDENTS

RULING

I. INTRODUCTION

1. On the 27th February 2007, the applicant/plaintiff filed suit in the magistrate's court seeking orders of injunction to restrain the defendants from interfering with her quiet possession of parcel of land title Nairobi/Block113/153. She also prayed for the eviction of the 2nd defendant/respondent from the said land.

2. She then realized five years after filing suit that the parcel of land was worth more than Ksh. 3 million in value. This meant that the magistrate court had no jurisdiction to hear the suit as their jurisdiction would exceed Ksh. 3 million.

3. On the 6th July 2012 she filed an application seeking this court orders that:

“Suit No. CMCC No. 1508 of 2007 be ... transferred from the Chief Magistrate's Court Nairobi to the High Court at Milimani Environment Land Court Division at Nairobi for hearing and formal determination.”

II PROCEDURE

4. On the day called out for hearing, the respondents 1 – 4 were absent. The matter was called out outside court. The application was heard *ex parte* under Order 12 r 2(a) of the Civil Procedure Rules.

III SUBMISSIONS

5. The applicant submitted that the suit be transferred. According to her application, this is because the subordinate court lacked jurisdiction.

IV FINDINGS

6. Where a suit is transferred from one court to the other, it cannot be so transferred unless that suit had in the first instance had been brought to a court which in the first place had jurisdiction to try the said suit.

7. As the applicant informs the court, the magistrate's court had no jurisdiction to hear the matter. It is unlikely that such a suit may be transferred to the High Court.

8. Part of the claim the applicant wants is to have the purchase price refunded to her, in an alternative prayer, possibly at the market rate. The sum would be more than anticipated. Therefore the wish to have the suit in the High Court.

9.9. I hereby find that the application is refused and dismissed. The case law of **Kagenyi – Vs – Musiramo & Another** (1968) EA 43 refers.

DATED THIS 16TH DAY OF OCTOBER 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates :

iv) *J.M. Mwangi instructed by M/s Irungu Mwangi Nganga T.T. & Co Advocates for applicant present*

v) *E.N. Njue instructed by M/s E.N. Njue & Co Advocates for respondent – absent*

vi)

1st and 2nd respondent absent