



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS CIVIL APPLICATION 387 OF 2012

Editorial Summary

1. *Civil Appeal*
2. *Civil Practice & Procedure*
3. *Subject of main magistrate suit.*

Running Down Cause

- 3.1 *Female adult.*
- 3.2 *Passenger.*
- 3.3 *Injuries/amputation to arm.*

4. *Application dated 11th July 2012*
 - 4.1 *To transfer suit to the High Court.*

REASONS

- 4.2 *Case exceeds monetary jurisdiction of the subordinate court.*

5. *Application not opposed*
6. *Held: Application dismissed.*
7. *Case Law: Kagenyi – Vs – Musiramo & Another (1968) EA 43*
8. *Advocates :*
 - i) *Non – appearance for M/s R.M. Mutiso & Co Advocates for applicant*
 - ii) *E.N. Ntambu instructed by M/s Kairu & McCourt & Co Advocates for respondent*

ROSE WANJIKU NJAU APPLICANT

VERSUS

NICHOLSON PHILIP

CAROLINE AKINYI

ENOCK OSINDE ONDIEK RESPONDENT

R U L I N G

I. INTRODUCTION

1. The magistrate's court case concerns a running down case in which the applicant sustained injuries in a motor vehicle accident. Her arm was amputated below the elbow. Realizing that the pecuniary award would be too low and the magistrate's courts would not have jurisdiction to award her the sum required, she changed advocates (presumably) and filed this present application.
2. The application of 11th July 2012 sought orders to transfer the magistrate's suit to the High Court on grounds that the subordinate courts lacked the monetary jurisdiction.
3. The applicant was not opposed by the respondent.

II PROCEDURE

4. On the day called out for hearing, the advocate for the applicant failed to attend court. The advocate for the respondent was present. The matter proceeded for hearing under Order 12 r 3(2)

Civil Procedure Rules, where only the defendant attends court for hearing, the court may proceed *ex parte*.

5. The respondent stated they had no objection to the said matter being transferred. The advocate did bring to the court's attention that the jurisdiction of the magistrate's court was enhanced in its monetary value to Ksh. 7 million under Gazette Notice Supplement 72 Act No. 12 on 12th July 2012.
6. The jurisdiction of the court was therefore perhaps not in issue.
7. The applicant's main reasons for transferring the suit to the High Court was on grounds that the magistrate's courts lacks preliminary jurisdiction to hear the same.
8. In the case law of **Susan Muthoni Karanja – Vs – East African Breweries** Misc No. 572/12, I relied on the case law of

Kagenyi – Vs – Musiramo & Another (1968) EA 43 in which the court held that where the subordinate court lacks jurisdiction to determine a matter, one court cannot transfer a suit to another court unless the suit had in the first instance been brought to a court which had jurisdiction to try it.

9. In the light of the new enhanced jurisdiction of the subordinate court and in the light of the above case law this application is accordingly dismissed with costs to the respondent.

DATED THIS 16TH DAY OF OCTOBER 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

***Advocates* :**

i) Non – appearance for M/s R.M. Mutiso & Co Advocates for applicant

ii) E.N. Ntambu instructed by M/s Kairu & McCourt & Co Advocates for respondent