



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Miscellaneous Civil Application 572 of 2012

Editorial Summary

1. *Civil application*
2. *Subject of main magistrate's suit - unknown*
3. *Application dated 15th October 2012*
 - I *Certificate of urgency*
 - II *Leave to change advocate*
 - III *Order of court to transfer suit CMCC 988/11*
from the magistrate's court to the High Court
 - i) *Reasons:*

The magistrate's court has no pecuniary

jurisdiction to hear suit.
4. *Held:*
 - 4.1 *Matter certified urgent.*
 - 4.2 *Representation should be done in the*

original file.
 - i) *Notice to change advocate if suit is*

pending

(Order 9 4 5 Civil Procedure Rules)
 - ii) *Application for leave to come on record*

if suit is finalized.

iii) *Not clearly indicated.*

4.3 *Transfers on grounds of lack of jurisdiction*

Kagenyi – Vs – Musiramo & Another

(1968) EA 43

4.4 *Application refused.*

5. *Case Law:*

Kagenyi – Vs – Musiramo & Another

(1968) EA 43

6. *Advocates :*

i) *M.W. Chege instructed by M/s
Njoroge Kimani & Co Advocates for applicant*

ii) *Non-appearance by M/s Muthoga Gaturu & Co Advocates for respondent*

SUSAN MUTHONI KARANJA T/A SUMKA ENTERPRISES

.....APPLICANT

VERSUS

EAST AFRICAN BREWERIES LTD RESPONDENT

R U L I N G

I. INTRODUCTION

1. There are three applications sought in this miscellaneous case.

1.1 That the court certified the application as urgent.

1.2 That the court grant leave for the firm of Njoroge O. Kimani Advocates to come on record for the plaintiff.

1.3 That the suit CMCC 988/11 be transferred to the High Court for proper determination of the same.

2. This court certified the application as urgent.

3. The applicant's proposed advocate wished to come on record instead of another law firm. The reason being that the other law firm were not diligent in the matter and had filed the suit in the magistrate's court instead of the High Court. The suit is coming up for hearing on 8th November 2012 and thus the urgency of the matter.

4. The magistrate's court did not have preliminary jurisdiction to hear the matter. Therefore the transfer from the subordinate court to the High Court.
5. The application does not disclose the subject matter of the application. Was it a tort or contract? Whether it is a finalized or pending case?
6. The advocate wishes to come on record. The rules require Order 9 r 5 Civil Procedure Rules that a notice of change of advocate be filed in the original file. This notice should thereafter be served upon all concerned parties and the former advocate, Order 9 r 6 Civil Procedure Rules, or else, the former said advocate remains on record until service is made upon them.
7. The rules require, where the suit has been finalized, then leave to come on record must be applied for under Order 9 r 9 Civil Procedure Rules. The former advocates must also be served with the application.
8. The application should have first been filed separately. Once there has been an order permitting the change of advocates or leave to come on record in the original file, then should an application be applied for.
9. On the issue of transferring the magistrate court case from the subordinate court to the High on grounds of pecuniary jurisdiction lacking by the magistrate's court, this meaning that the magistrate's court has no jurisdiction to hear the case, it therefore means that this High Court has no jurisdiction to hear this matter.
10. In the case law of **Kagenyi – Vs – Musiramo & Another** (1968) EA 43 (Sir Udo Udoma CJ) held that an order for transfer court be made unless the suit had been in the first instance brought to a court which had jurisdiction to try it.
11. The application herein is dismissed.
12. There will be no orders as to costs, as the other party had not been served to attend court.

DATED THIS 16TH DAY OF OCTOBER 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates :

- iii) *M.W. Chege instructed by M/s Njoroge Kimani & Co Advocates for applicant*
- iv) *Non-appearance by M/s Muthoga Gaturu & Co Advocates for respondent*