



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

MISCELLANEOUS CIVIL APPL. NO. 44 OF 2009

JOSEPHAT MUIA KIOKO (suing as Chairman UKAI SELF HELP GROUP)

UKAI SELF HELP GROUP.....APPLICANTS

VERSUS

ANTHONY MWASYA MAUNDU

TITUS MWANIKI

ALPHONCE MUOKI MAKENZI

JAMES NDAMBUKI MAKENZI

**MOSES MUTUNE.....
.....RESPONDENTS**

R U L I N G

The application dated 4th September 2009 is by way of Notice of motion under Section 8(1) (a) of the Civil Procedure Act seeking that Malindi SPMCC NO. 212 of 2009 be transferred to Malindi High Court for hearing and further disposal.

It is based on grounds that the Senior Principal Magistrate's pecuniary jurisdiction is limited to kshs. 2million yet the subject matter value exceeds kshs. 10million.

Secondly, there is a prayer for declaration which orders can only be issued by the High Court. No prejudice will be occasioned by such transfer.

The affidavit in support of the application is sworn by Josephat Muia Kioko who depones that the current value of the subject matter is kshs. 10,000,000/=.

There is however no document of valuation filed by a qualified valuer confirming the purported value and simply stating that it is worth over 10million is not enough reason to warrant this court ordering that the matter be transferred from the Senior Principal Magistrate's Court (whose pecuniary jurisdiction by the way is kshs. 3million). The pleadings annexed do not contain prayers for declaration, prayer (a) seeks handing over to documents and for audit to be carried out (b) cancellation of Title and issuance of a fresh one to the plaintiff.

Consequently, there is no merit in the applicant and the same is dismissed with costs to be born by the plaintiff/applicant.

Delivered and dated this **28th** day of **February 2011** at Malindi.

H. A. OMONDI
JUDGE

No appearance at 12.00pm.