



**CIVIL PRACTICE AND PROCEDURE**

· Application for transfer of subordinate suit to High Court.

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**MISC. APPLICATION NO. 153 OF 2010**

**STEPHEN MUTUAMBIA KIAMBATI ..... PLAINTIFF**

**VERSUS**

**STANLEY GITONGA MWITHIMBU ..... DEFENDANT**

**RULING**

An application is made by way of Notice of Motion dated 11<sup>th</sup> October 2010. It is brought under section 18 of the Civil Procedure Act. The applicant who is the plaintiff in CMCC Meru No. 896 B of 2003 seeks the transfer of that suit to this court for hearing and determination. The application was not opposed by the respondent. In the lower court, the applicant initially filed a plaint whereby he sought an injunction against the respondent seeking to bar him from entering on parcel number *Kiirua/Naari/1554*. On 23<sup>rd</sup> March 2010, the applicant filed with the leave of the court an amended plaint seeking to evict the defendant who has entered into the above mentioned land. The respondent in the lower court when that amended plaint was filed raised a preliminary objection on a point of law. That preliminary objection was upheld. The court held that it had no jurisdiction to entertain the applicant’s suit in view of section 3 of the Land Dispute Tribunal Act. That section provides that the Land Tribunal Act has jurisdiction in respect of agricultural land in claims for trespass, use of land and disputes relating to boundaries. It is on that basis that the applicant now seeks the transfer of that suit to this court. The application is based on section 18 (1) (b) (i) of the Civil Procedure Act which provides as follows:-

***“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) .....**

**(b) *Withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter -***

**(i) *Try to dispose of the same; or***

**(ii) .....**

The application not being opposed is allowed as follows:-

1. *CMCC Meru No. 896B of 2003 is hereby transferred to this court for disposal.*
2. *The costs of the Notice of Motion dated 11<sup>th</sup> October 2010 shall be in the cause.*

*Dated, signed and delivered at Meru this 17<sup>th</sup> day of March 2011.*

**MARY KASANGO**  
**JUDGE**