

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Miscellaneous Civil Case 37 of 2009

JULIUS BONIFACE KARURU M'EBUTHANIA

(suing as the Legal representative of the estate of

DORIS KENDI KARURU (deceased) APPLICANT

VERSUS

HENRY MWORIA M'MUTUA 1ST RESPONDENT

GOEFFREY MURIRI KINYUA 2ND RESPONDENT

THE TRUSTEES REGISTERED,

DIOCESES OF MERU 3RD RESPONDENT

JAMES MWANGI MWAI 4TH RESPONDENT

RULING

The applicant has brought a Notice of Motion dated 8th July 2009 brought under S. 18 (b) (ii). By that application, he seeks for the court to order the transfer of CMCC Maua No. 217 of 2007 to the CM Court at Meru for the writing and delivering of the judgment. In his affidavit, the applicant deponed that the matter was heard and finally concluded before the Maua Magistrate Court on 11.6.2009. The parties were directed to submit in writing before judgment. On preparing his submissions, advocate for the applicant realized that the award under Fatal Accident Act and Law Reform Act would exceed the jurisdiction of the Senior Principal Magistrate at Maua. The said magistrate has a maximum jurisdiction of Kshs. 1million. The application was not opposed by the respondent. Section 18 (i) (b) (ii) does give this court power to transfer a suit pending in a subordinate court for trial or disposal to any court subordinate competent to try or dispose of the same. The application is properly within the provisions of that section. It is not one which is caught by the finding of the case of **KAGENYI Vrs. MUSIRAMO** (1968) E.A. P. 43. In that case, it was found that the High Court has no power to order a transfer of a suit when the original court had no jurisdiction. In this case, the applicant applies to transfer his suit from one magistrate court to another magistrate court. The application is merited. I grant the following orders:-

1. That the Maua SPMCC No. 217 of 2007 be and is hereby transferred to The Chief Magistrate Court at Meru for the writing and delivering of the judgment.

2. There shall be no orders as to costs in respect of the Notice of Motion dated 8th July 2009.

Dated and delivered at Meru this 22nd day of July 2009.

MARY KASANGO

JUDGE