



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Miscellaneous Application 658 of 2009**

**MONSANTO KENYA LIMITED ..... APPLICANT**

**VERSUS**

**LUCIA WACEKE..... 1<sup>ST</sup> RESPONDENT**

**AMOS NJUGUNA MUNGAI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

The Application before me is a Notice of Motion brought under Order L Rule 1 of the Civil Procedure Rules, Sections 15(a) (b), (c), 18 (b) (ii) and Section 3A of the Civil Procedure Act. The application is supported by the affidavit of **Francis Kamau Kithamba** and on the grounds of the face of the application. The application is not opposed.

The application seeks to have this honourable court withdraw a suit in the Senior Resident Magistrate Court being case No.95 of 2009 **LUCIA WECEKE KAMAU & AMOS NJUGUNA MUNGAI** suing as legal representatives of the estate of **JOHN MWANGI KAMAU** (deceased) vs. **MONSANTO KENYA LIMITED** at Kandara and transfer the same to Chief Magistrate Court at Thika for final disposal, and costs of the application.

The application is brought upon the grounds that the Kandara Resident Magistrate’s court has no territorial jurisdictions to entertain the suit. Section 18 of the Civil Procedure Act grants the High Court the power to withdraw a suit pending in a subordinate court and to transfer the same for disposal to another court. The court must be satisfied that the suit was filed in a court of competent jurisdiction in the first instance before transferring the same to another court of competent jurisdiction. In the case of **Omwoyo vs. African Highlands & Produce Company Ltd [2002] 1 KLR 698 at page 699** Ringera J. (As he then was ) held:-

**“ That being the case, the sole issue for determination here is whether this court has jurisdiction to transfer a suit from a court which is seized of it but has no jurisdiction to determine it to a court vested with jurisdiction. (In) *Kagenyi – vs- Misiramo & Another [1968] E.A 48*, Sir Udoma Udoma CJ held in relation to Section 18 of the Uganda Civil Procedure Act- a provision which is in pari material with section 18 of our code – that an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first place brought to a court which has jurisdiction to try it. In that case the appellant had sought to transfer a suit from the magistrates’ court to the High Court on the basis that the claim exceeded the pecuniary jurisdiction of the lower court. And in the very early case of *Mendonca –vs- Rodrigues [1906-1908] 251 KLR Hamilton J* held that the High Court did not have power to order a transfer of a suit on the ground of want of jurisdiction only. The case involved a dispute which was outside the local jurisdiction of the lower court in which it had been filed. The principle of law to be gleaned from this authorities is that the High Court cannot exercise its discretion to transfer a suit from one court to another if the suit is filed in the first place in a court which does not have pecuniary and/or territorial justification to try it.”**

In the circumstances I find that the applicant has not satisfied this court that the suit now pending before the Kandara Court was competently filed in the said court and therefore I am unable to grant the application and dismiss the same with costs.

Dated and delivered at Nairobi this 13<sup>th</sup> day of November, 2009.

**ALI- ARONI**

**JUDGE**