



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Misc. Appli. 127 of 2007

JEDIDAH WAMBU GUTU.....APPLICANT

VERSUS

MARIE STORES KENYA LTD.....RESPONDENT

RULING

Notice of Motion dated 30/11/2007 seeking orders for the transfer **Civil Suit No. 30 of 2005** **Baricho Senior Resident Magistrate Court** to this court for trial and final disposal. The ground upon which the orders are sought is that the Senior Resident Magistrate Court does not have pecuniary jurisdiction to award expected damages. A medical report made on 6/11/2007 shows that the injuries have become aggravated and the expected award shall be higher than a sum awardable by in the circumstances. The application is opposed. The Respondent submits that the transfer cannot be ordered since the lower court is without jurisdiction several authorities are cited to support his proposition:-

1. HCC No. 86/2004 Mombasa. The principle matters to be taken into consideration are a balance of conveniences, questions of expense interest of justice and possibilities of undue hardship
2. HCC No. 308/2002 at Nairobi on transfer of suit under section 18 CPA.

The High Court has no power to transfer a case where it was filed in a court without jurisdiction.

Upon considering the authorities and submissions of parties I have to say that in a case which concerns injuries to a person it is possible to say even Resident magistrate has jurisdiction to determine any damages. I do not say that the lowest court has not jurisdiction to deal with the matter. However the need may arise due to unseen circumstance or aggravation of the injuries that may require the issue of pecuniary jurisdiction to be revisited. This does not to me appear as advocate mistake. I believe what the applicant on the aggravated injuries, it is my view that the need to do justice to the injured litigant is paramount consideration.

I therefore allow this application and grant orders sought.

Dated this 29th May, 2008.

J. N. KHAMINWA

JUDGE

29/5/2008

Khaminwa – Judge

Njue – Clerk

Mr. Mwai HB for Mr. Magee

Ruling read in open court.

J. N. KHAMINWA

JUDGE