



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

**GEOFFREY MUTIA ..... APPLICANT**

**VERSUS**

**DESDERIO NJEBI M'NKANATA..... 1<sup>ST</sup> RESPONDENT**  
**ROBERT MUTWIRI MUGWIKA ..... 2<sup>ND</sup> RESPONDENT**  
**JOHN KINYUA ..... 3<sup>RD</sup> RESPONDENT**  
**DAVID MUTWIRI GIKUNDA ..... 4<sup>TH</sup> RESPONDENT**  
**PHARIS KIMAITA MURIIRA ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

The applicant herein seeks an order of this court to withdraw and transfer to itself NANYUKI SPMCC No. 124 of 2007 from Nanyuki Law Court for hearing and determination.

The application is premised on the ground that the applicant intends to amend the plaint to include prayers for injunction and eviction which, according to him, cannot be tried by the subordinate court currently seized of the matter.

Although the respondent did not respond to this application by way of a replying affidavit or grounds of

opposition the court permitted counsel to respond from the bar on points of law. Counsel submitted that NANYUKI SPMCC No. 124 of 2007 is incompetent and cannot on that score be transferred. I have considered carefully these arguments and hold the following view on the matter.

According to the plaint filed in NANYUKI SPMCC No. 124 of 2007 by the applicant the latter seeks two substantive orders, namely-

***“(a) A declaration that the plaintiff is the sole registered proprietor of Land Parcel No. NGUSISHI SETTLEMENT SCHEME/19 and the defendant’s entry thereon is unlawful***

***(b) Special damages as pleaded herein and general damages for trespass.”***

These prayers were the subject of a preliminary objection raised and argued before the Senior Principal Magistrate, Nanyuki, who overruled the objection observing that the lower court has jurisdiction to try the suit as presently framed. That decision has not been challenged. That being so and in terms of section 7 of the Civil Procedure Act this court is barred from revisiting that issue. Suffice to only add that strictly speaking the suit being for a declaration of proprietary rights of the parties and a claim in damages falls outside Section 3 of the Land Disputes Tribunal Act.

The law is settled that although section 18(1) (b) (i) of the Civil Procedure Act donates an unfettered discretion to the High Court to withdraw at any stage either on the application by a party or *suo motu*, any suit pending in a subordinate court and transfer it to itself for trial and determination, that discretion can only be exercised if the subordinate court seized of the suit is, in the first place, clothed with the necessary jurisdiction to entertain it. See ***Omwoyo V. African Highlands and Produce Co. Ltd***, (2002) KLR 698. Conversely the High Court can only transfer a suit to itself or to another subordinate court if it or the subordinate court has the jurisdiction to try it.

The main question in this application is whether the subordinate court at Nanyuki has the jurisdiction to entertain the suit as it is presently framed. It was intimated by learned counsel for the applicant in his submissions in this application that the land in dispute is registered under the Registered Land Act – Cap 300.

If that be so section 159 of that Act limits the jurisdiction of the subordinate court in matters relating to titles registered under the Act to land or subject matter whose value does not exceed twenty five thousand pounds (at Kshs. 20, equivalent to Kshs. 500,000). The value of the subject matter has not been disclosed by either party. I have no basis to doubt that its value does not exceed 25,000 pounds.

In a nutshell, I find that the suit as currently brought in the subordinate court is triable in that court. That being the case it may be transferred to this court for trial and determination. It is so ordered.

I make no orders as to costs.

Dated and delivered at Meru this 12<sup>th</sup> ..day of ...May..... 2008.

**W. OUKO**

**JUDGE**