



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**MISC . APPLI . 116 OF 2007**

**JAMES MITHIKA ..... APPLICANT**

**VERSUS**

**SIMON MITHIKA CHOKERA ..... 1<sup>ST</sup> RESPONDENT**

**DISTRICT LAND ADJ. OFFICER MERU NORTH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

The application before me is by Notice of Motion dated 2<sup>nd</sup> November 2007. It seeks an order of transfer of Tigania SRM Civil Suit No. 72 of 2007 to Meru Chief Magistrates Court for trial and disposal.

The application is grounded on the basis that the applicant has no confidence in the Tigania Court where he has been sued as a defendant and he has counter-claimed. The only reason why the applicant has lost confidence in that court is as a result of a refusal by the trial court to allow a preliminary objection. The application was argued *ex parte* as the three respondents did not reply to it. Counsel for the 3<sup>rd</sup> respondent did not oppose it.

The High Court is clothed with wide discretion in matters of transfer of suits or appeals, either from itself to any court subordinate to it or between subordinate courts or even from any subordinate court to itself. In the exercise of this discretion the High Court must act judicially and in the interest of justice. Transferring a suit from a magistrate with jurisdiction to another magistrate also with jurisdiction will only be resorted to in very rare situations. There must be sufficient ground for doing so.

The reason advanced for the transfer in the present application is not sufficient ground. The fact that a preliminary point was disallowed does not, *per se* constitute any form of misconduct on the part of the trial court. Secondly, the proceedings disallowing the preliminary objection and the ruling are not annexed.

I have looked at the ruling in particular and fail to discern any bias on the part of the learned magistrate. In dismissing the objection, the trial magistrate simply gave his opinion. The applicant's recourse in the circumstances cannot be in the transfer of the case.

The application must therefore fail and is dismissed. I make no orders as to costs.

Dated and delivered at Meru this 3<sup>rd</sup> ...day of June..... 2008.

**W. OUKO**

**JUDGE**