

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc. Appli. 384 of 2008

ROBERT GITAU KANYIRI.....APPLICANT

VERSUS

CHARLES R. KAHISA.....1ST RESPONDENT

RUTH WAMAITHA MUTHUMBI.....2ND RESPONDENT

**EPHRAIM K. MUONGI.....3RD
RESPONDENT**

R U L I N G

1. The applicant, Robert Gitau Kanyiri prays that this Honourable Court be pleased to withdraw Naivasha CMCC No. 978 of 2007 – Robert Gitau Kanyiri –vs- Charles R. Kahisa & 2 Others from the Naivasha Principal Magistrate’s Court to the High Court for hearing and determination. The reasons for the application are that:-

- (i) *The plaintiff’s claim against the defendant is in excess of over Kshs.1,00,000/=.*
- (ii) *The Principal Magistrate or head of station at Naivasha Law Court has jurisdiction of only Kshs.1,000,000/=.*
- (iii) *At the time of filing the suit, the Naivasha Law Courts were headed by Honourable Muchemi (C.M) who had jurisdiction of Kshs.3,000,000/= but she has since been transferred to another court and has not been replaced and there is also no likelihood that she will be replaced by another Chief Magistrate.*
- (iv) *The defendants stand to suffer no prejudice should this application be allowed.*

2. The application, brought by way of Notice of Motion under the provisions of Order 1 Rule 1 of the Civil Procedure Rules, Section 18 (1) (b) (i) of the Civil Procedure Act and all other enabling provisions of the law is also premised on the sworn affidavit of Julia Ngonyo Munyua who reiterates the grounds set out on the face of the application and also says that as an advocate of this Honourable Court, she has been made to understand that the station will continue to be headed by Hon. Njagi and therefore that there is no likelihood that a Chief Magistrate will be sent to the station soon. In the circumstances, Miss Munyua contended that the plaintiff should not be made to wait indefinitely for Naivasha Law Courts to receive a Chief Magistrate as head of station in order to deal with his case.

3. The application was not opposed though M/s Wekesa & Co. Advocates for the respondents were duly served with the same on the 27/06/2008. Miss Munyua submitted at the hearing that no prejudice would accrue to the respondents if the suit is transferred. She also submitted that the cause of action herein arose within the geographical jurisdiction of the High Court in Nakuru, though she said that all the parties reside in Nairobi and that for convenience the applicant wants this matter heard in Nairobi. I have looked at the Supporting Affidavit but cannot find any averment to the effect that the parties herein reside in Nairobi. The only reason given in both the grounds on the face of the application and the sworn affidavit

is that the Chief Magistrate at the Naivasha Law Courts has since been transferred and left the station under the leadership of a magistrate whose pecuniary jurisdiction is only Kshs.1,000,000/=.

4. I have carefully considered the application and the provisions of the law under which the same is brought and I am persuaded that the following orders will meet the ends of justice:-

1. *That Naivasha CMCC No. 918 of 2007 – Robert Gitau Kanyiri –vs- Charles R. Kahisa & 2 Others be and is hereby withdrawn from the Naivasha Principal Magistrate’s Court and transferred to the High Court at Nakuru for hearing and determination.*

2. *That costs of this application be provided for.*

Orders accordingly.

Dated and delivered at Nairobi this 25th day of July 2008.

R.N. SITATI

JUDGE