



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Misc. Appli. 434 of 2008

PETER NKOIDILLA)

MOSES YIAMPOI.....)

DANIEL LANGAT.....).....APPLICANTS

DANIEL MUTENDEI.....)

LUCY OLOLNGOJINE.....)

V E R S U S

THE CHIEF MAGISTRATE’S COURT AT KISII.....RESPONDENT

LEKISHON OLEGEEM.....INTERESTED PARTY

R U L I N G

This is a Chamber Summons dated 18th July, 2008 filed under certificate of urgency by M/s Mburu Mbugua & Company advocates for the applicants. The respondent is named as the Chief Magistrate’s Court Kisii. There is also an interested party named as LEKISHON OLEGEEM.

The application was filed under the Law Reform Act (Cap. 26) and Order 53 rule 1 of the Civil Procedure Rules. It seeks for the following orders, that –

1. *This application be certified as urgent, service be dispensed with and the same be heard ex-parte.*
2. *This Honourable be pleased to grant leave to the applicant to dispense with service of Notice to the Registrar.*
3. *Leave be granted to the Applicants to apply for Judicial Review Orders of certiorari to issue to remove into the High Court and quash the proceedings and orders issued by the Chief Magistrate’s Court at Kisii in Civil Case No. 454 of 2008 LEKISHON OLEGEEM –VS- PETER NKONDILA & 8 OTHERS.*
4. *Leave be granted to the applicants to apply for Judicial Review Order of prohibition do issue prohibiting the Chief Magistrate’s Court at Kisii from entertaining hearing and determining issuing orders decrees and or proceedings in Civil Suit No. 454 of 2008 at Kisii.*

5. *The leave granted do operate as a stay of the Orders and proceedings in CMCC No. 454 of 2008 at Kisii.*

The application has grounds on the face of the Chamber Summons. The grounds are that the proceedings offend the provisions of the Civil Procedure Act Cap. 21; that the suit offends the provisions of the Magistrate's Court Act Cap.10; that the Chief Magistrate's Court at Kisii has no jurisdiction to hear and determine the suit; that the suit is an abuse of the court process; and that the orders and proceedings in the suit are null and void *ab initio*.

The application was filed with a supporting affidavit sworn on 18th July, 2008 by MOSES YIAMPOI, one of the applicants. It was also filed with a STATEMENT, and a VERIFYING AFFIDAVIT sworn by the same MOSES YIAMPOI on 17th July, 2008.

The application was heard ex-parte. At the hearing of the application, Mr. Mbugua, for the ex-parte applicants submitted that the subject matter of the proceedings related to Local Authority elections in Trans Mara District, at Kilgoris. Counsel submitted that under Section 7 of the Magistrate's Court Act (*Cap.10*) the Resident Magistrate Kilgoris was the court that had jurisdiction to entertain the matter. Also under Section 11 of the Civil Procedure Act, (*Cap. 21*), all civil proceedings were required to be filed within the jurisdiction in the respective District.

Counsel contended that the filing of proceedings before the Chief Magistrate at Kisii was an error, and the injunctive orders issued by the Kisii court on 11/3/2008 were wrong. Counsel contended that the Kisii suit was set for hearing on 21/7/2008, and that there was a real danger that if the suit at Kisii progresses, the applicants will be forced to obey an illegal order. Therefore the applicants were asking for leave to file Judicial Review proceedings, as well as stay orders.

I have considered the application documents filed and the submissions made by Counsel before me. In my view, the applicants have demonstrated a sufficient interest in the subject matter. It is the Local Authority elections in Trans Mara affecting them which is the subject matter. However, the applicants have not demonstrated a prima facie arguable case.

The applicants seem to be challenging the jurisdiction of the Chief Magistrate's Court at Kisii, and maintain that the magistrate at Kilgoris has jurisdiction to hear and determine the matter.

I do not think that the above raised a matter for Judicial Review proceedings. A Chief Magistrate has national jurisdiction, and the Kisii Chief Magistrate is the Senior Most magistrate in the administrative area where Kilgoris District falls.

Where there is a dispute as to which subordinate court should hear and determine a matter, Section 17 of the Civil Procedure Act (Cap. 21) should be used rather than the Judicial Review procedure under section 8 and 9 of the Law Reform Act. Section 17 of the Civil Procedure Act provides-

"17. Where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant on notice to the other parties, or the court of its own motion, may, at the earliest opportunity, apply to the High Court to have the suit transferred to another court; and the High Court after considering the objections, if any, shall determine in which of the several courts having jurisdiction the suit shall proceed."

The applicants herein should have applied to the High Court at Kisii for the transfer of the case to the subordinate court at Kilgoris. They do not appear to have done so. In my view, the applicants do not appear to have a prima facie arguable case in Judicial Review. On that basis, I find that this application for leave lacks merits. I will dismiss the same.

For the above reasons, I dismiss the application and decline to grant any of the orders sought.

Dated and delivered at Nairobi this 26th day of September, 2008.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Mbugua for applicants