REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

IMisc Appli 308 of 2007

JOSEPHAT KINANDU KARIUKI…….....….1ST APPLICANT

CYRUS KARIUKI KINANDU (Suing as the Administrators of the estate of the late

ALICE WANGECHI KINANDU (DECEASED)…….....2ND APPLICANT

VERSUS

PETERSON MWANGI NJUGUNA….....…….1ST RESPONDENT

MUGOYA ENGINEERING CONSTRUCTION COMPANY LTD.....2ND RESPONDENT

RULING

The applicants are the plaintiffs in Naivasha SPMCC No. 914 of 2004. They have applied under **Sections 3A, 17** and **18** of the **Civil Procedure Act** for the transfer of that suit from that court to the Senior Principal Magistrate's Court at Nyahururu for trial and final determination. The application is based on the ground that the accident giving rise to that suit occurred along Wanjohi – Captain Road which is within the territorial jurisdiction of the Nyahururu court.

Relying on the cases of **Adero & Another Vs Ulinzi SACCO Society Ltd [2002] 1 KLR 577, Omwoyo Vs African Highlands & Produce Co. Ltd [2002] 1 KLR 698** and **Kagenyi Vs Musiramo & Another [1968] EA 43,** Miss Mutuku for the Respondent submitted that the applicants should, instead of seeking the transfer, withdraw that case and file a fresh one at Nyahururu. This is because in her view the Naivahsa court had in the first instance no jurisdiction to entertain the suit.

Having considered these submissions I agree with Mr. Masinde for the applicants that **Section 3(2)** of the **Magistrates Jurisdiction Act** being a later enactment to the **Civil Procedure Act** is, on the rules of interpretation of statutes, deemed to have amended **Section 15** of the **Civil Procedure Act**. I therefore find that the Senior Principal Magistrate at Naivasha has, by dint of that section, jurisdiction throughout the country. He therefore had jurisdiction to try the suit sought to be transferred. In the circumstances I allow the application with costs to the Respondent in any event.

DATED and delivered at Nakuru this 30 day of October, 2008.

D. K. MARAGA

JUDGE