



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

Misc. Civ. 67 of 2008

CHRISTINE CHESIMINY..... APPLICANT

VERSUS

THE BOARD OF TRUSTEES KAPTEBENGWO WOMEN GROUP....1ST
DEFENDANT/RESPONDENT

THE CHAIRMAN KAPTEBENGWO PEFE CHURCH.....2ND DEFENDANT/RESPONDENT

BONIFACE KIMETTO 3RD DEFENDANT/RESPONDENT

RULING

1: Background

1. The Plaintiff/applicant had filed a land matter in the Magistrate’s Court at Sotik praying for a permanent injunction to restrain the defendant/respondent from dealing with a certain land parcel being LR Kericho/Boito/1456.

2. I do not have before me that original file, but the applicant informs the court that a trial indeed commenced before a magistrate. The said magistrate was transferred. When a new magistrate took over the matter, that new magistrate made an order upon the file declaring that he had not jurisdiction to hear that matter. Namely

“I note that there is a title deed which is being challenged. This court has (no) jurisdiction to cancel a title deed even if it was found to have been fraudulently obtained. The parties are advised to move the High Court for conclusive determination of this suit. In the meantime matter stood over generally. Status quo remain.

Signed 31st May, 2007”.

3. The Plaintiff/applicant accepted this position and filed within 14 days, this application before me seeking orders from the High Court under **Section 18** of the Civil Procedure Act to transfer the Lower Court case to the High Court of Kenya at Kericho.

4. The main grounds for this, is that the trial magistrate had no jurisdiction to entertain the said suit.

5. The respondent/defendant participated in the part heard case. They attempted to file a replying affidavit which was rejected as having been filed out of time.

III: Findings

6. The applicant concedes that the trial magistrate had no jurisdiction to hear the land case. This therefore meant that only the High Court would have heard the case.
7. In the case law of **Kagenyi v Musirano & other 1968 EA 43** a similar situation arose. It was established therein that if the lower court, where the original suit was first filed, had no jurisdiction then the whole suit was an illegality before that Court. You can therefore not transfer an illegal suit to the High Court for further hearing.
8. The applicant may require to withdraw their case in the Subordinate Court and file a properly constituted suit in the appropriate Court.
9. As it stands the application is accordingly dismissed, with no costs to the respondents as no reply was filed on time.

DATED this 17th day of December, 2008 at Kericho.

M.A. ANG'AWA

JUDGE

Advocate

V.K Bii & Co. advocates for the Plaintiff/applicant

J.M. Motanya & Co. advocates for the Defendant/Respon