



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

**Civil Case 403 of 2007**

1. Land and Environmental Law Division
2. Civil Practice and Procedure:-
  - i) Transfer of suit from Nairobi CMCC court to Thika CMCC
  - ii) That the defendants reside where the premises is.
3. Application dated 27.6.07 to transfer CMCC 12915/06
4. Opposition by state. The CM's court lacks jurisdiction to hear the prayers against the 1<sup>st</sup> defendant.
5. Held: The issue of the courts jurisdiction against the 1<sup>st</sup> defendant be dealt with in the Chief Magistrate court Nairobi.
6. Case law
7. Advocate:

F.N. Kimani of F.N. Kimani & Co. Advocates for the plaintiff/applicant - present

P.K. Njoroge of P.K. Njoroge & Co. Advocates for the 2<sup>nd</sup> and 3<sup>rd</sup> defendant/respondent – present

L.N. Muiruri of the Attorney General for 1<sup>st</sup> defendant/respondent - present

**JOSEPH KABENI MATHERI ..... PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL .....1<sup>ST</sup> DEFENDANT**

**JOHN GITHINJI MWANGI .....2<sup>ND</sup> DEFENDANT**

**JEREMIAH GITHINJI MAHUGU .....3<sup>RD</sup> DEFENDANT**

## RULING

### APPLICATION OF 27.6.2007

1. The applicant herein seeks this courts orders to transfer a suit filed at the Milimani Commercial Courts, Chief Magistrate Court Civil suit 12915/06 from that court to the Chief Magistrate Court case in Thika.

2. The reasons of transfer under section18 of the Civil Procedure Act is that the defendants reside near Ruiru. Their court is in Thika. Accordingly the a Kenya Gazette 19 January 2007 it is a requirement that suits be filed where the defendants reside, in this case Thika.

3. The suit was filed at the Nairobi Milimani Commercial Court. That the state questioned the Jurisdiction of the court to make orders against the Attorney General by the Chief Magistrate a transfer was required.

4. The state objection to the transfer on grounds that the Chief Magistrate having no jurisdiction to make orders against the Attorney General the said suit cannot therefore be transferred.

#### II: Finding

5. Under section 15 of the Civil procedure Act suits must be instituted where the defendant resides or where the cause of action arose. In this case the Attorney General is not questioning the suit but is questioning the Jurisdiction by the court to make orders before it against the 1<sup>st</sup> defendant.

Namely the relief sought is under the Registration of Title Act Cap.281. Under section 2 of the act the word "court" refers only to the High Court. This therefore means the Chief Magistrates court has no Jurisdiction to deal with the prayers raised in the suit.

6. Once a court has no jurisdiction to deal with a matter then the said suit cannot be transferred due to lack of jurisdiction. I hereby would uphold the said argument by the state by relying on the case law of Kagenyi v Musiramo (1968) EA 43.

7. This application herein is hereby dismissed with costs to the state.

Dated this 15<sup>th</sup> day of November 2007 at Nairobi.

**M.A. ANG'AWA**

#### JUDGE

F.N. Kimani of F.N. Kimani & Co. Advocates for the plaintiff/applicant - present

P.K. Njoroge of P.K. Njoroge & Co. Advocates for the 2<sup>nd</sup> and 3<sup>rd</sup> defendant/respondent – present

L.N. Muiruri of the Attorney General for 1<sup>st</sup> defendant/respondent - present