

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 840 of 2007

AGNES NJERI NJOROGE APPLICANT

VERSUS

LIMURU MUNICIPAL COUNCILRESPONDENT

RULING

I: Transfer of suit

1. The application of 24 October 2007 seeks that the Senior Resident Magistrates Court Case at Limuru being No.353/06 be transferred from the said Limuru Subordinate Courts to the Nairobi Environmental Land Case Division for trial and disposal under section 18 of the Civil Procedure Act Cap.21 Laws of Kenya

Accordinging to the copy of plaint annexed therein, the plaintiff Agnes Njeri Njoroge sued the Municipal Council of Limuru for a declaration that failure to approve her building plans amounts to an illegal an unjustifiable action. She also prayed for an injunction restraining the defendants from demolishing her structures and or harassing her.

3. The Municipal Council of Limuru filed this present application for transfer of that said suit to the High Court of Kenya whereby the reasons given is that the witnesses to be called are all situated in Nairobi. It would be correct for the trial to be filed and heard in Nairobi. The other major reasons for transfer is that the Senior Resident Magistrate courts at Limuru has no jurisdiction to hear the suit. The pecuniary powers of the magistrate at Limuru is Ksh.800,000/-. The defendants wish to file a counter claim and this most certainly would exceed the pecuniary jurisdiction of that court. The applicant original defendant has not annexed his defence for perennial by this court. The plaint was filed a year ago being dated 3 October 2006.

4. Most certainly the lower courts does not have jurisdiction to hear the said suit. The plaintiff has been asked to stop construction her suit should have originally been filed in the High Court at Nairobi and not in Limuru.

5. In Kagenyi v Musiramo & Another (1968) EA 43 where the lower court has no jurisdiction to hear a matter that case cannot be transferred to the High Court as it is a nullity.

6. The defendant applicant require to file suit at the High Court of Kenya on grounds that the jurisdiction of the subordinate court is not admitted.

7. I decline to grant this application for transfer under Section 18 Civil Procedure Act. There will be costs to the applicant as the respondent original plaintiff was absent to be paid by the respondent original plaintiff.

Dated this 13th day of November 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

E.M. Wachira for E.M. Wachira & Co. Advocates for the Ex parte/applicant original defendant – present

M/s Wariuki & Co. Advocates for the Respondent original plaintiff-absent