



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Misc Appli 249 of 2005**

**CHARLES WAINAINA NJEHIA.....PLAINTIFF**

**VERSUS**

**BARCLAYS BANK OF KENYA:.....DEFENDANT**

**RULING**

This application is brought under the provisions of Section 18 1(b) of the Civil Procedure Rules and seeks an order that a suit pending in the Chief Magistrate's court No.1263 of 2003 be transferred to the High Court for hearing and final disposal.

The reason for the application is that the Lower Court has no jurisdiction to hear the matter as the matter relates to Title Land registered under the Registered Land Act valued at Kshs.1,600,000/=. Under the provisions of section 159 of the Registered land Act is any a dispute in respect of a property valued over Shs.500,000/= ( \$ 25,000) can only be determined by the High Court. Section 159, of the Registered Land Act provides as follows:-

**“ S.159. Civil Suits and proceedings relating to the**

**title to or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in land, lease, or charge being an interest which is registered or registrable under this Act, or which is expressed by this Act not to exceed twenty five thousand pounds by the Resident Magistrate's Court or where the dispute comes within the provisions of section 3 (1) of Land Disputes Tribunal Act in accordance with that Act.”**

At the hearing of this application, the Defendant raised a preliminary objection stating that this court had no jurisdiction to entertain the application for transfer as it is void ab initio. The Defendant invoked the provisions of section 159 of the Registered Land Act in sort of this objection. This court heard the rival submissions by counsel for the parties.

From reading the provisions of the section 159 of the Registered Land Act, it is certain that the plaintiff should not have filed the suit in the Chief Magistrate's court which lacked the jurisdiction to entertain the suit herein. It ought to have been filed in the High Court on which jurisdiction is conferred by the statutory provisions.

In the case of **ADERO ANUTHEN & ANOTHER -V- ULINZI SACCO SOCIETY LTD** (2000) I KLR, 577 relied upon by the Defendant, Justice Ringera (as he then was) stated:-

**“ On whether the High Court could have had jurisdiction at the time the suit was instituted on the grounds that the Co-operative Tribunal had been not constituted, my view is that jurisdiction either exists or does not ab initio and the non-constitution of the forum created by statute to adjudicate on specified disputes could not of itself have the effect of conferring jurisdiction on another forum which otherwise lacked jurisdiction.....Having taken the view that this court had no jurisdiction to entertain the matter, it follows that it could not transfer the same to another court. In that regard it is trite law that where a cause is filed in court without jurisdiction, there is no power to transfer it to a court of competent jurisdiction”.**

I wholly agree with the Honourable Judge in the said case and I do hereby reach a similar decision. On the said grounds there is, in effect, nothing capable of being transferred as the suit is itself a nullity. The lack of jurisdiction has been conceded to by the plaintiff. Having been filed in a court without jurisdiction, there is nothing to take out to be heard elsewhere or transferred to another court.

Counsel for the plaintiff submitted that this court can extend the frontiers of section 18 of the Civil Procedure Code and grant the orders sought. With respect, this is not a matter of discretion. There is an express statutory provision which barred in effect, the filing of this kind of suit in the Chief magistrate’s court. This suit was, therefore, filed in breach of the law. This court cannot in law cure this situation.

In the premises, I do hereby uphold the preliminary objection and dismiss the application dated 7<sup>th</sup> October,2005 with costs to the defendant.

**DATED AND DELIVERED AT ELDORET ON THIS 19<sup>TH</sup> DAY OF JUNE,2006**

**M. K. IBRAHIM**

**JUDGE.**

**19<sup>TH</sup> June,2006**

Coram -

Ibrahim J

Mr. Ngigi for the Applicant/Plaintiff

No Appearance for the Defendant/Respondent

Ruling delivered in open court in presence of the Applicant’s counsel.

**M.K. IBRAHIM**

**JUDGE**