

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

MISC APPL. NO.; 138 OF 2003

**GRACE NELIMA APPLICANT
VS
JAMIN SIMIYU RESPONDENT**

R U L I N G

The applicant herein, Grace Nelima, is praying to have Divorce cause No. 3 of 2003 in Sirisia DM's court transferred to another court of competent jurisdiction for hearing and determination. The main ground advanced to back up the application is that the District Magistrate at Sirisia has shown open bias against her and has even gone to the extend of making an order for a refund of the dowry. The summons is supported by the applicant's affidavit sworn on 10th July 2003. it is her argument that it would be to the interest of justice and fair play if the above case is transferred to enable her get a fair hearing. She has annexed a copy of typed proceedings to the affidavit in support of the summons.

The summons is opposed by the Respondent who filed a replying affidavit. The respondent's ground of argument is that the applicant has not shown the kind of bias the Sirisia Distrc Magistrate has exhibited in handling the said Divorce cause. It was further averred by the respondent that the applicant has been unwilling to bring her witnesses to testify in court.

I have examined the law relating to the matrimonial causes. The substantive law is under the matrimonial causes Act Cap. 152 Laws of Kenya. The law does not provide for a provision of transfer of matrimonial causes. I think in the absence of such a provision I will fall back to Section 18 (1) (b) of the Civil Procedure Act. Such applications are normally instituted by filing a Notice of Motion. However I will overlook the fact that the application before me is a summons instead of a motion.

The main ground put forward in support of this application is that the District magistrate has shown that he is biased in hearing the Divorce cause. I have perused the proceedings annexed to the affidavit in support. It is clear that the Divorce cause has not been heard. In fact it is the Respondent who informed the DM's court on 5.6.2003 that he had not been refunded the dowry. The court did not make the order complained of by the applicant. The DM's court simply marked the cause as S.O.G. In the absence of proof I think the application lacks merit. Consequently this chamber summons is ordered dismissed with costs to the respondent.

READ THIS 22nd DAY OF January 2004

J.K. SERGON

JUDGE