



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**MILIMANI COMMERCIAL COURTS**

**MISC. APPLICATION 867 OF 2003**

**AMIN MOHAMED A.H. MOHAMED .....PLAINTIFF**

**VERSUS**

**MAGAN M. CHANDARIA.....DEFENDANT**

**RULING**

The present application dated 25th August 2003 is brought by the Plaintiff seeking to transfer the suit SPMCC No 5088 of 2003 from the Senior Principal Magistrate's court to be tried and disposed by this court.

The application is brought under section 18 of the Civil Procedure Act.

The application is brought under the ground that the plaintiff's claim touches on the issue of Trust Property and Section 2 of the Trustee Act Cap 167 defines a court as the High Court or a Judge thereof.

It is evident from the submissions by the applicant's counsel and from the affidavit in support that the suit being sought to be transferred to the High Court was filed in the Senior Resident Magistrate's Court which has no jurisdiction to entertain or determine it. The jurisprudence of the cases **KAGENYI V MISIRAMO & ANOTHER (1968 ) E.A. 48** and **MENDONCA V RODRIGUES (1906 – 1908) 2 KLR**, is that the High Court did not have power to order transfer of a suit on the ground of want of jurisdiction alone; in other words an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first place brought to a court which has jurisdiction to try it. That clearly is the case in this matter in that the matter being under the Trustee Act cannot be entertained in the Senior Resident Magistrate's Court. The application for the reason stated herein fails.

The application dated 25th August 2003 is dismissed with no orders as to costs.

Dated and Delivered this 22nd day of September 2004.

**MARY KASANGO**

**AG JUDGE**