



- 1) Civil Practice and Procedure
  - 2) Jurisdiction of High Court
  - 3) Suit originally filed at the Milimani Commercial Courts Chief Magistrate's Court on 13.1.00
  - 4) Suit transferred to Nairobi High Court 3.10.00 on grounds that plaintiff would get more award
  - 5) Held: Suit incompetent and is struck out
  - 6) Case law  
Kagenyi v Musiramo 1968 EA 43
  - 7) Advocates:
  - 8) N. Kibatia & Co. Advocates for the plaintiff
- No appearance for the defendant

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE 256 OF 2001**

**LEONARD NJERU .....PLAINTIFF**

**VERSUS**

**CHRISTOPEHR MURAYA KANYI .....DEFENDANT**

**RULING**

The ruling before me concerns the jurisdiction of the High Court.

In this suit, which involves a pedestrian/ motor vehicle accident, whereby the deceased was run down by a motor vehicle on 31.7.99 at 6.00 a.m. and sustained fatal injuries, the legal representative filed a suit on 13.1.00 before the Chief Magistrates Court at Milimani.

Thinking that the award to be given by the chief magistrate would be very little the plaintiff had the suit transferred to the High court of Kenya at Nairobi for determination on 13.10.00.

The plaintiff changed advocates. The current advocate submitted to this court and stated that "Initially the court had jurisdiction when the party felt that there would be more award and thus transferred the suit to the High Court." This decision was not that of the new advocate but of the previous old, former advocate. It seems that the chief magistrates court was not able, at the time, to have jurisdiction to hear this matter; thus the transfer. I hereby find that where the subordinate courts lack jurisdiction in the first instance to hear a matter then the High Court cannot transfer the suit to be heard by it as there was no jurisdiction to hear the matter in the first place I believe this matter was well expanded in the case of Kagenyi v Musiramo & Another 1968 EA43.

I hereby struck out this suit. I make no orders as to costs and award none to the defendant as he was absent at the time the case came for trial. As to the effect of my orders the plaintiff will have to start again subject to the Limitation of Action Act Cap.22 laws of Kenya.

**Dated this 23rd of September, 2004 at Nairobi.**

**M.A. ANG'AWA**  
**JUDGE**

**Kibatia & Co. Advocates for the plaintiff**

**Wairagu & Wairagu Advocates for the defendants**