



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS SUCCESSION APPLICATION NO. 7 OF 2019**

**ESTERA MMBONE LUSASI.....APPLICANT**

**VERSUS**

**EUNICE MORAA.....RESPONDENT**

**RULING**

1. The applicant has moved the court by a Motion dated 25<sup>th</sup> March 2019, seeking:-

(a) transfer of Hamisi SRMCSC No. 2 of 2017 to the High Court for final determination; and

(b) immediate confirmation of a property known as Kak/Kapsotik/578.

2. The grounds upon which the transfer is sought are detailed on the face of the Motion. The trial court is accused of proceeding in a slow pace with continued adjournments calculated to delay the hearing, refusing to confirm the grant, secretly convening a court session, refusing to certify typed proceedings, among other grounds. The factual background is set out in the affidavit sworn in support. The applicant has attached several documents to support her case.

3. The law governing the place of filing suits is that suits where property is the subject matter are filed in the court nearest to the property. Pecuniary jurisdiction is the other factor. The applicants are not raising those issues. The property is located within Hamisi Sub-County, from what I can see. Its agricultural land out there is a rural area, its value cannot possibly exceed the pecuniary jurisdiction of a magistrate's court. From the look of it the cause was filed in a court with jurisdiction.

4. The issues the applicant raises have something to do with how she perceives the court seized of the matter to be doing or not doing.

5. Parties ideally should not pick and choose the court where they wish to have their case heard, just as they should not choose which particular Judge or Magistrate should hear their case. The Hamisi court is manned by two judicial officers. Either of them have the - jurisdiction to hear the matter. If there are issues with the manner a particular judicial officer is handling a matter, if good grounds exist, the party should ask the officer to recuse themselves. Transfer of a matter before such an application is made should not arise. Writing letters all over the place is not a solution either.

6. I see no reason why the High Court should cause the matter to be transferred to itself. The matter should only be brought here on appeal should the Hamisi court make a decision that the parties are aggrieved by. I am not persuaded that I should order the transfer sought. The application is accordingly dismissed.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 15<sup>th</sup> DAY OF November, 2019**

**W. MUSYOKA**

**JUDGE**