



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

MISC. CIVIL APPLICATION NO. 342 OF 2018

(Coram: Odunga, J. in Chambers)

IN THE MATTER OF ARTICLE 165(6) OF THE CONSTITUTION

AND

IN THE MATTER OF MAVOKO SPM MISC. APPLICATION NO. 47 OF 2018

BETWEEN

ROBERT CHESANG.....PLAINTIFF/APPLICANT

VERSUS

MAISY PAULINE OMUNGALA CHESANG.....1ST RESPONDENT

OFFICER COMMANDING POLICE DIVISION (OCPD).....2ND RESPONDENT

THE OFFICER COMMANDING STATION (OCS),

ATHI RIVER POLICE STATION.....3RD RESPONDENT

THE DEPUTY OFFICER

COMMANDING STATION, ATHI RIVER.....4TH RESPONDENT

FRED TOO.....5TH RESPONDENT

CAROLINE SEET.....6TH RESPONDENT

DIRECTIONS

1. My attention has been bought to the order of **Hon. J A Agonda**, Senior Resident Magistrate, Mavoko dated 4th October, 2018 in Mavoko SPM Misc. Application No. 47 of 2018, wherein proceedings were commenced under the provisions of *The Protection Against Domestic Violence Act* and the *Persons Deprived of Liberty Act*.

2. The Applicant and the 1st Respondent in the said proceedings are husband and wife respectively. That union however seems to be rocked by marital turbulence and allegations of domestic violence have been made against the 1st Respondent by the Applicant. It is the said allegations that provoked these proceedings.

3. When the matter came up before **Hon. Oluoch, SPM**, Mavoko, she heard that the application and was due to deliver her ruling on 21st September, 2018, which ruling was deferred to 28th September, 2018. On the said date, however, **Hon. Oluoch, SPM**, disqualified herself from the matter citing personal reasons and directed that the matter be placed before Court 4 for directions.

4. When the matter was placed before **Hon. Agonda, SRM**, she similarly disqualified herself from the matter citing conflict on interests on

the apparent grounds that the 1st Respondent herein is her colleague. The Learned Magistrate then proceeded to direct that the matter be transferred to this Court for hearing of the application dated 24th August, 2018(sic).

5. I am not aware of any legal provision that empowers a Magistrate's Court to transfer a matter pending before the Court to the High Court for hearing. It may well be that a matter pending before the Magistrate's Court may be referred to the High Court for appropriate directions. While the High Court may do so either pursuant to section 17 of the **Civil Procedure Act** or in the exercise of the Court's supervisory jurisdiction donated by Article 165(6) of the Constitution, the converse is not permissible. It is clear therefore that the decision transferring Mavoko SPM Misc. Application to this Court was highly irregular and such procedure ought not to be adopted.

6. Be it as it may, since the matter has been brought to my attention albeit irregularly, Article 165(6) and (7) aforesaid provide as follows:

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

7. As the first port of call in the matters of these kind is the Magistrate's Court, notwithstanding the fact that this Court is, subject to Article 165(5) of the Constitution, clothed with unlimited original jurisdiction in criminal and civil matters, to take over this matter when the Magistrate's Court has the powers to handle the same would amount to denying a party aggrieved one stage in the appeal process.

8. I am not convinced that the subject of this dispute cannot be fairly heard and determined by another Magistrate's Court notwithstanding the fact that the 1st Respondent is a judicial officer.

9. In the premises and in the exercise of the powers conferred upon this Court pursuant to Article 165(6) as read with Article 159(2)(d) of the Constitution, Mavoko SPM Misc. Application No. 47 of 2018 is hereby removed from Mavoko Senior Principal Magistrate's Court and is hereby transferred to the Chief Magistrate's Court, Machakos for hearing and determination.

10. Let the matter be mentioned before the Chief Magistrate for directions on 18th October, 2018.

11. The Deputy Registrar to transmit a copy of these directions to **Hon. J A Agonda**, Senior Resident Magistrate, Mavoko.

12. It is so ordered.

Issued at Machakos this 15th day of October, 2018.

G V ODUNGA

JUDGE

CA Geoffrey