



**REPUBLIC OF KENYA**

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

**HCA CASE NO. 02 OF 2015**

**NELSON NYONGESA WANDA.....APPLICANT**

**VERSUS**

**PHILIP JUMA SHAMALLA.....1<sup>ST</sup> DEFENDANT**

**ISAAC MAFURA LUNANI.....2<sup>ND</sup> DEFENDANT**

**[Being an appeal by Hon. D. Mutai delivered on 16.1.15 CMCC no. 602 of 2013]**

**JUDGMENT**

1. This is an appeal arising from the Ruling of Hon. D. Mutai SRM Bungoma that was delivered on 16.1.2015 in CMCC No. 602 of 2013 wherein the Hon. Magistrate struck out the appellant's suit with costs on grounds that the same was lodged outside the jurisdiction of the court.

2. The appellant who was the plaintiff in the suit being aggrieved by the decision appealed to this court on the grounds that

***i. The Ruling of the Hon. Magistrate was contrary to Order 4 Rule 9 of the Civil Procedure Rules 2010.***

***ii. The trial magistrate failed to hold that the Magistrate's Courts have jurisdiction throughout the Republic of Kenya.***

***iii. The decision was unprocedural.***

3. At the hearing the court received written and oral submission from the appellant however despite service of the hearing date and directive that parties do file written submissions there were no submissions filed by the respondent nor appearance at the time of hearing.

4. Counsel for the applicant submitted that dismissing the case was contrary to the Magistrate's Act which empowers Magistrates to have jurisdiction throughout the country. He argued further that the best action by the trial magistrate was to transfer the matter to another court as pecuniary jurisdiction was acknowledged.

He relied on ***Jedidah Katwa Kyetu vs. John Njoronge Ngige versus Kenya Power & Lighting Civil Appeal No. 93 of 2011.***

5. Having considered the application and submissions made I align myself with the authority cited and the other authorities on the subject namely; ***Onesmus Mwanza Mutual vs. Daima Bank Ltd, 2014 eKLR & Mohamed Sitaban Vs. George Mwangi Karoki C.A. No. 13 of 2002.***

6. I therefore quash and set aside the ruling of the trial court. The matter may proceed in Bungoma Chief Magistrate's court and should the applicant wish to have it transferred an appropriate application may be filed. Costs to the applicant.

**DATED AND DELIVERED AT BUNGOMA THIS 19<sup>TH</sup> DAY OF JANUARY, 2017.**

**ALI-ARONI**

**JUDGE.**