



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

E.L.C. NO 9 OF 2014

FORMERLY KERUGOYA MISC APP 16 OF 2014

NDWIGA MUKUNDI.....APPLICANT

VERSUS

NASARINO NTHIA MBAKA.....RESPONDENT

RULING

INTRODUCTION

1. The applicant has by his notice of motion dated 10th February, 2015 supported by an affidavit of the same date applied to this court for a transfer of this suit to the court of the Chief Magistrate at Embu for hearing and final determination. Additionally, he has applied to have the costs of this application to be costs in cause.

2. According to him, the suit property has a market value of less than one million (Kshs. 1,000,000) Kenya shillings and it is for this reason that he has stated that the court of the Chief Magistrate has pecuniary jurisdiction.

3. Finally he states that a transfer should be granted in the interests of justice and fairness. The applicant had also sought for leave to file the suit out of time which application is based on section 1A, 1B and 3A of the Civil Procedure Act as read with section 27 of the Limitation of Actions Act and Order 50 rule 6 of the 2010 Civil Procedure Rules.

4. This in itself is an *ex-parte* application and when it came for hearing, I ordered that Mr Andande for the respondent should not be heard because an application for leave to file a suit out of time is heard and determined *ex-parte*.

5. The present application is seeking to have the matter heard and determined as to whether the leave should be granted to the applicant to file the suit out of time.

The Applicable Law:

6. The law that is applicable in this matter is found in Section 18 of the Civil Procedure Act which is in

relation to the jurisdiction of the High Court to transfer suits to the subordinate magisterial courts. Additionally, the other relevant provisions are found in section 5(1) of the Magistrates Court Act Cap 10 of the Laws of Kenya.

7. According to the provisions of section 5(1) of the Magistrates Courts Act, the court of the Chief Magistrate has a pecuniary jurisdiction not exceeding seven million (Kshs 7,000,000) Kenya shillings. It is therefore clear that that court has the competent jurisdiction to entertain this application for leave to file a suit out of time.

Issues for Determination:

8. In the light of the affidavit evidence and the law, the issues for determination are as follows:

1. Whether or not the magisterial subordinate court has the pecuniary jurisdiction to entertain the suit.
2. Whether or not the applicant has met the necessary conditions for transfer.
3. Who should pay for the costs of this application.

Evaluation of the Affidavit Evidence, Findings and the Law Applicable:

9. I have perused the affidavit evidence and the law applicable and I find that the monetary value of the suit land is less than one million (Kshs 1,000,000) shillings. The court of the Chief Magistrate has a monetary jurisdiction not exceeding seven million (Kshs. 7,000,000) shillings.

10. It therefore follows that it has the necessary jurisdiction to entertain this suit which currently is for leave to file the suit out of time. If the application succeeds that court has the competent jurisdiction to entertain and determine the main suit on its own merits. The application proceeded *ex-parte* because it was seeking transfer of an application to the magisterial court to file a suit out of time, which matter had to be heard *ex-parte*.

Verdict and Disposal Order:

11. In the light of the foregoing issues, I hereby make the following orders:

1. An order transferring this application to the court of the Chief Magistrate for determination of the application for leave to file a suit out of time.
2. Costs of this application shall be costs in cause.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **7th** day of **MAY 2015**.

In the presence of Mr Momanyi holding brief for Mr Maina for applicant and in the absence of the respondent.

Court clerk Mr Nyaga.

J.M. BWONWONGA

JUDGE