



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**MERU ELC MISC APPLICATION CASE NO. 16 OF 2020**

**ZAKAYO KAMENCHU.....APPLICANT**

**VERSUS**

**JENNIFER KANARIO IKIAO.....1<sup>ST</sup> RESPONDENT**

**DOUGLAS KINYUA IKAMATI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This application is dated **4<sup>th</sup> August, 2020** and seeks the following orders:

1. That this matter be certified urgent and heard on priority basis during vacation.
2. That pending hearing and determination of this application interparties, the honourable court be pleased to grant an order of stay of proceedings at the lower court in Tigania PMCC No. 17 of 2020.
3. That the court do order transfer of Tigania PMCC No. 17 of 2020 to the Environment and Land Court for hearing and determination.
4. That this honourable court do stay the Ruling delivered on 29<sup>th</sup> July, 2020 by the honourable Gathogo Sogomo P.M. in Tigania PMCC No. 17 of 2020 pending hearing and determination of this suit.
5. That costs of this application be in cause.

2. The application is supported by the affidavit of Zakayo Kamenchu, the applicant, and has the following grounds:

1. That the value of the suit property(s) plot numbers 92, 133 and 134 Kianjai arket is approximately Kshs.15,000,000/=, and the Principal Magistrate Court lacks jurisdiction to hear and determine the matter.
2. That the proceedings in Tigania PMCC No. 17 of 2020 offend the provisions of Section 7 (1) C of the Magistrates Court Act, 2015.
3. That this application has been made diligently and without unreasonable delay.
4. That unless the said ruling is stayed the applicant will suffer irreparably.
5. That accordingly, in the interests of justice and fairness, the said orders sought in this application ought to be granted as prayed.

3. I do note that a copy of the plaint that spawns this application has not been availed. Whereas it is true that the pecuniary jurisdiction of a Principal Magistrate's Court is a maximum of Kshs.ten million shillings, the subject matter in a civil suit is the claim contained in the plaint and not the value of property in question. If a claimant is only claiming half-part of a property whose value is K.shs. fifteen million shillings, then the claim is for K.shs.7,500,000/=. Again, a court of law may find it necessary to transfer the suit in question to a Chief Magistrate's Court or to a Senior Principal Magistrate's Court both of which have pecuniary jurisdiction to hear and determine a suit whose claim is Kshs. Fifteen million. Therefore, not every case where a magistrate lacks pecuniary jurisdiction ought to be transferred to the Environment and Land Court.

4. The following directions are issued:-

a) This matter is NOT CERTIFIED urgent but will be heard on PRIORITY basis.

b) Prayer 2 is denied.

c) Prayers 3, 4 and 5 will be canvassed before the Honourable Lady Justice Mbugua, ELC Judge, at Meru on 23<sup>rd</sup> September, 2020.

**Delivered in chambers at Chuka this 12<sup>th</sup> day of August, 2020**

in the presence of:

CA: Ndegwa

**P. M NJORGE,**

**JUDGE.**