

That the case has come up for hearing on three occasions i.e. 18th January 2007, 11th August 2008 and 22nd September 2008 but each time the trial magistrates seized of the matter have been disqualifying themselves for the reason that I am one of the employees working under them.

For that reason she prayed that the case should be transferred to another court of competent jurisdiction for hearing and disposal. That the defence counsel has no problem with the transfer application as per copy of the letter annexed hereto and marked as Exhibit "E31".

I have carefully analysed the application. I have also taken into consideration the fact that the defence counsel has no objection to the transfer as evidenced by exhibit "E31".

Section 18 of the Civil Procedure Act Provides thus:

“ On the application of any of the parties

and after notice to the parties and after

hearing such of them as desire to be heard,

or of its own motion without such notice,

the High Court may at any stage –

(a)transfer any suit, appeal or other

proceedings pending before it for

trial or disposal to any court subordinate

to it and competent to try or dispose of

the same; or

(b)withdraw any suit or other proceedin

pending in any court subordinate to it,

and thereafter –

(i) try or dispose of the same; or

(II) transfer the same for trial or disposal

to any court subordinate to it and

competent to try or dispose of the same;

or

(iii) retransfer the same for trial or disposal

to the court from which it was withdrawn.

(2)Where any suit or proceeding has been

transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn”.

In the disclosed circumstances of this case, I see no good reason why the application should be disallowed.

Accordingly, in the interest of justice and in consonance with section 18 of the Civil Procedure Act, I transfer the case to the Kapenguria Principal Magistrate’s court for hearing and final disposal.

Dated and delivered at Kitale Law Courts this 20 day of JUNE 2009.

N.R.O. Ombija

JUDGE

Ms Fuchaka for Okile for plaintiff