



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC MISC. APPL. CASE NO. 01 OF 2019**

**NAOMI KAREA NJAGI (SUING AS THE LEGAL REPRESENTATIVE  
OF THE ESTATE OF JESCA GATIRIA (DECEASED)).....APPLICANT**

**VERSUS**

**ESTHER CIAKAANA RUKUNGI.....1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR CHUKA.....2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. This application is dated **14<sup>th</sup> May, 2019** and it states that it has been brought to court under sections 18(1) B, 1A, 1B, 3 and 3A of the Civil Procedure Act and under Order 51 of the Civil Procedure Rules.

2. The application seeks the following orders:

1. That the suit filed by the applicant against the respondent being Chuka E & L Case No. 113 of 2018 in the Chief Magistrate's Court be transferred there from to Marimanti Magistrate's Court for trial and determination.
2. That costs of this application be provided for.

3. The application has the following grounds:-

1. That the applicant filed E & L Case No. 113 of 2018 against the respondents herein at Chuka Chief Magistrate's court.
2. That no party will be prejudiced if the orders sought herein are granted.
3. It is in the interest of justice that this application is made.

4. The application is buttressed by the affidavit of NAOMI KAREA NJAGI sworn on 15<sup>th</sup> May, 2019, which states:-

I, NAOMI KAREA NJAGI of P. O. Box 1249-60200 Meru in the Republic of Kenya do hereby make oath and state as follows:-

1. That I am the applicant herein well versed with all the facts in this matter hence competent to swear this affidavit.
2. That my late sister was the legal and legitimate owner of parcel land No. Tharaka/Nkondi "A"/1275.
3. That the 1<sup>st</sup> Respondent fraudulently caused the said land parcel to be transferred to her name prompting me to file Chuka Chief Magistrate's ELC Case No. 113 on behalf of the estate and beneficiaries in my sister's estate through the firm of Kaberia Arimba & Co. Advocates.
4. That I am informed by my advocate on record which information I verily believe to be true that there is a legal

requirement which requires a suit relating to property to be filed where the subject matter is located.

5. That the subject matter is located in Marimanti within the geographical jurisdiction of Marimanti Law Courts.

6. That thus, the legal requirement implies that the subject parcel of land in Chuka ELC 113 of 2018 is within the jurisdiction of the magistrate court, Marimanti.

7. That filing the suit in Chuka Law Courts was an innocent oversight on the part of the advocate and was not in any way meant to delay or defeat the wheels of justice.

8. That it is our most humble prayer that this matter be transferred to the Marimanti Magistrate's court for hearing and determination.

9. That no party will be prejudiced if the orders sought herein are granted.

10. That (sic)

11. That it is only just and fair that the orders sought herein are granted for the expeditious disposal of the matter.

12. That all what is deponed hereinabove is true to the best of my knowledge, information and belief.

5. When the application was slated for hearing on **28<sup>th</sup> May, 2019**, the applicant's advocate, Mr Peter Kaimba, told the court that the application had been properly served upon the 1<sup>st</sup> respondent's advocate. He also told the court that he did not serve the 2<sup>nd</sup> and 3<sup>rd</sup> respondents because they had not entered appearance in the lower court's file.

6. Mr. Kaimba told the court that the suit land, Tharaka/Nkondi "A"/1275 was situated within the jurisdiction of Marimanti Law Courts.

7. Having perused the apposite pleadings and having heard the applicant's advocate, I find that the application has merit.

8. In the circumstances, it is ordered as follows:

a. Prayer 1 is granted with the effect that Chuka E & L Case No. 113 of 2018 is herewith transferred to Marimanti Magistrates Courts for hearing and determination.

b. Costs shall be in the cause.

**c. Mention at Marimanti Law Courts on 27.6.2019.**

**Delivered in open Court at Chuka this 28<sup>th</sup> day of May, 2019 in the presence of:**

CA: Ndegwa

Kaimba for the applicant

**P. M. NJORGE**

**JUDGE**