



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC CASE NO. 35 OF 2014**

**BERNARD WAMBU NDEGWA.....PLAINTIFF**

**-VERSUS-**

**CHARLES NDEGWA MUCHOKI.....DEFENDANT**

**RULING**

1. The application dated 22<sup>nd</sup> February, 2018 seeks the following orders:-

**1. Service of this application in the first instance be dispensed with and the application be heard exparte.**

**2. This court do transfer this case to Karatina Senior Principal Magistrate's Court for hearing and determination.**

**3. Costs be provided for.**

2. The application is premised on the grounds that the suit property is situated in Karatina and is valued at Kshs.1.5 million; that the applicants reside in Karatina and no prejudice will be suffered by any of the parties if the matter is heard and determined by that court.

3. The application is supported by the affidavit of Bernard Wambu Ndegwa where the grounds in the application are reiterated. In addition, it is deposed that there is a Succession Cause No. 482 of 2012 pending in Nyeri High Court which suit was stayed until this suit is heard and determined; that directions were given by the High court on 21<sup>st</sup> February, 2018 directing the applicant to file an application seeking transfer of this matter to Karatina Senior Principal Magistrate's court for speedy disposal of the suit within 30 days, failing which, the court would vacate the orders for stay.

4. The application is opposed vide a replying affidavit sworn by the respondents on 29<sup>th</sup> March, 2018. They depose that no sufficient ground has been offered warranting the transfer.

5. In the case of **Malindi Law Society vs Attorney General and 4 others** (2016)eKLR in **Malindi Constitutional Petition Case No. 3 of 2016**, Magistrates courts were found to have jurisdiction to hear and determine land matters within their pecuniary jurisdiction. The instant suit is one of such matters that fall within the pecuniary jurisdiction of the Magistrates courts. The value of the land is said to be 1.5 million and is situated in Karatina where the parties reside. The prayers sought in the plaint are for determination of a customary trust which is within the jurisdiction of the lower court. See **Section 7(3)(a)**

of the Magistrates courts Act, 2015 which provides:

**”A magistrate’s court shall have jurisdiction in proceedings of a civil nature concerning any of the following under African customary law:**

**(a) Land held under customary tenure”.**

7. Having found the Magistrates courts have jurisdiction to hear and determine the instant case, I hereby transfer the file to Karatina Senior Principal Magistrates court for hearing and determination.

8. Costs of the application will be in the cause.

**Dated, signed and delivered in open court at Nyeri this 30<sup>th</sup> May, 2018.**

**L N WAITHAKA**

**JUDGE**

Coram:

Bernard Wambu Ndegwa – applicant

Charles Ndegwa Muchoki – 1<sup>st</sup> respondent

John Gikandi Ndegwa – 2<sup>nd</sup> respondent

Court assistant - Esther