



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**MISCELLANEOUS APPLICATION NO. 8 OF 2014**

**JACKSON KIMANI**  
WAWERU.....1<sup>ST</sup>  
**APPLICANT**

**DANIEL KAGORI**  
NJUGUNA.....2<sup>ND</sup>  
**APPLICANT**

**MARY WAIRIMU MWANIKI (ON BEHALF OF BENJAMIN CHESEREK CHEMENGICH – DECEASED).....3<sup>RD</sup> APPLICANT**

**DAVID KARIMI**  
MARETE.....4<sup>TH</sup>  
**APPLICANT**

**PATRICK GAKOBO**  
MATHENGE.....5<sup>TH</sup>  
**APPLICANT**

**HASSAN GODANA**  
BAGAJA.....6<sup>TH</sup>  
**APPLICANT**

- VERSUS -

**ATTORNEY GENERAL OF**  
KENYA.....1<sup>ST</sup> **RESPONDENT**

**COMMISSIONER OF**  
POLICE.....2<sup>ND</sup>  
**RESPONDENT**

**SHADRACK**  
MULANGA.....3<sup>RD</sup>  
**RESPONDENT**

**MUNICIPAL COUNCIL OF**  
NAIVASHA.....4<sup>TH</sup> **RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 4<sup>th</sup> July, 2014)

### **RULING**

The applicants filed an application on 16.04.2014 through Katunga Mbuvi & Company Advocates. The application was brought under **Article 162(2) (a) of the Constitution, sections 4(1) and 12(1) of the Industrial Court Act** and all enabling laws. The prayers are that Civil Suit No. 1001 of 2009 in the Chief Magistrate's Court at Naivasha be transferred to this court for hearing and determination because this court has jurisdiction and the court in Naivasha in which the suit is filed lacks jurisdiction to hear and determine the suit.

The plaint in the pending suit makes prayers for judgment against the respondents in favour of the applicants for:

- a. **Order directing the 3<sup>rd</sup> defendant on behalf of the 4<sup>th</sup> defendant to lift the suspension and reinstate them with all their benefits and unpaid salary from 12.01.2009 to-date.**
- b. **Damages for false detention and malicious prosecution in Criminal Case No. 83 of 2009 at Naivasha.**
- c. **Damages for the tort of defamation.**
- d. **Costs of this suit and interest.**
- e. **Any other relief the honourable court may deem fit to grant.**

The 4<sup>th</sup> respondent opposed the application by filing on 16.05.2014, the replying affidavit of **J. M. Motari** through Rodi, Orege Advocates. The 4<sup>th</sup> respondent's case is that the suit in the Chief Magistrate's Court is founded on claims of defamation and malicious prosecution. The further opposition is that on 21.11.2013, the Magistrate's Court ruled that it lacked jurisdiction to hear the case and the suit thereby stood dismissed and there was no suit for transfer to this court in such circumstances. Further, the 2<sup>nd</sup> and 4<sup>th</sup> respondents have ceased to exist and without necessary amendments and 3<sup>rd</sup> respondent having been wrongly sued as an individual, the suit was incompetent.

The court has considered the submissions and the parties' respective positions and makes findings as follows:

1. No order dismissing the suit has been exhibited and the court finds that there is a pending suit that is capable of transfer if found appropriate to do so.
2. The issues relating to amendment of pleadings are matters that will best be ventilated if the suit is transferred, after such transfer.
3. The finding in the lower court that the court lacks jurisdiction as submitted to oppose the transfer has the effect that if the transfer is disallowed, the applicants will be prejudiced as their access to fair and expeditious determination of the suit will be defeated.
4. The respondents submit that the suit seeks reinstatement which the court is not allowed to make under **section 12(3) of the Industrial Court Act, 2011**, where three years have lapsed. First, the submission acknowledges that the suit is about or related to employment but the relief sought is not available. Such, in the opinion of the court is a submission to be made in opposition to the suit. Secondly, the court finds that the suit makes a prayer for lifting a suspension and not about reinstatement.
5. Taking all the submissions and the circumstances of the application into account, the court finds

that it will meet the ends of justice if the suit is transferred to this court for hearing and determination.

In conclusion, the application is allowed with orders that:

1. **Civil Suit No. 1001 of 2009 in the Chief Magistrate's Court at Naivasha is transferred to this court at Nakuru for hearing and determination.**
2. **The applicants will take steps towards transfer of the court file as ordered.**
3. **Upon the transfer of the suit file, the Deputy Registrar to fix the suit for mention before this court on a date notified to all parties for directions.**
4. **The costs of the application to abide the outcome of the suit.**

**Signed, dated and delivered in court at Nakuru this Friday 4<sup>th</sup> July, 2014.**

**BYRAM ONGAYA**

**JUDGE**