

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

MISC. APP NO. 207 OF 2019

MICHAEL NGOTHO GITAU.....APPLICANT

-VERSUS-

SOOJAE LEE.....RESPONDENT

RULING

1. **Michael Ngotho Gitau** (hereinafter the applicant) has filed a **Notice of Motion** application dated **4th June 2019**. He seeks by that application an order that the Milimani Chief Magistrate's court case No 3840 of 2017 be transferred to this court. That transfer is sought on the basis that he intends to file a defence and counter claim for Ksh 120 million which amount is beyond the pecuniary jurisdiction of the magistrate. The applicant did not attach to his application the proposed counter claim he intends to file in the Chief Magistrate's Court. He later filed a further supplementary affidavit where he attached the proposed counter claim.

2. The suit before the chief magistrate was filed by Soojae Lee (hereinafter the Respondent) against the applicant. In that case before the Chief Magistrate the respondent claims for judgment for Ksh 1,040,000/=. The respondents claim in that regard is that he paid, on behalf of the applicant Ksh 600,000. That payment was in respect of the loan the applicant owed his banker Sidian Bank. Further the respondent claimed that he lent the applicant Ksh 440,000/=. It is the total amount of the above sums that make up the respondent's claim, at the Chief Magistrate's court, against the applicant.

3. The amount claimed by the respondent is within the pecuniary jurisdiction of the Chief Magistrates Court. However the amount the respondent proposes to be in his draft counter-claim Ksh 120 million is beyond the pecuniary jurisdiction of the Chief Magistrate Court. The pecuniary jurisdiction of the Chief Magistrate is Ksh 20 million.

ANALYSIS

4. The respondent's claim as stated before is within the jurisdiction of the Chief Magistrate's Court.

5. The applicant's draft counter-claim is allegedly based on unsigned joint venture agreement. Since it is unsigned the applicant fails to set out in his counter-claim how the respondent bears liability there under. The applicant in my view has failed to show to this court how his counter-claim is related to the respondent's claim before the Chief Magistrate. I therefore find that the applicant has failed to properly invoke the discretion of this court. It is for that reason I find the applicant's application fails. Indeed as correctly stated by the respondent, the applicant should proceed to file his own independent suit. There is no basis of transferring the suit before the Chief Magistrate's Court.

6. In the end the Notice of Motion dated 4th June 2019 is dismissed with costs to Soojae Lee.

DATED, SIGNED and DELIVERED at NAIROBI this 17TH day of DECEMBER, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie.....COURT ASSISTANT

.....FOR THE APPLICANT

.....FOR THE RESPONDENT