



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

MISC APPL. NO 16 OF 2017

AMANI MARA LTDAPPLICANT

VERSUS

ASHIF AYUB SULEIMAN1ST RESPONDENT

SHELINA SULEIMAN2ND RESPONDENT

RULING

1. The applicant has applied for an order of transfer under sections 3A and 18 (1)(b) of the Civil Procedure Act (Cap 21) Laws of Kenya as read with Order 51 rule 1 of the 2010 Civil Procedure Rules. The basis of the application is that the subject matter of the suit is in the sum of USA Dollars 220,000, which is the equivalent of about Ksh.22 million plus other sums of money, which in total sum amounts to approximately Shs. 30 million.

2. He has also stated in his notice of motion that section 7 (1)(a) of the Magistrates Court Act No. 26 of 2015 provides that the pecuniary jurisdiction of the Chief Magistrate in Narok does not exceed Ksh.20 million and it is for that reason that the applicant seeks transfer of civil suit namely Narok CMCC No. 168 of 2015, be transferred to the High Court for hearing and determination. In support thereof, the applicant has cited the case of *Owners of Motor Vehicles "Lillian S" vs. Caltex Oil Kenya (1989) KLR 1*, in which it was held that jurisdiction is everything and without it, a court has no power to make one more step.

3. Additionally, the applicant through its director, Mark Sang, has deponed to a 9 paragraphs affidavit in which he has converted the grounds on the face of the Notice of Motion into affidavit evidence, in an expanded form.

4. The respondents have filed submissions in opposition to the application. In their submissions, they have submitted that the trial magistrate court had ruled on 9/11/2016 that it had jurisdiction to hear the suit. They have further submitted that the applicant was granted 14 days to appeal and to date no appeal has been preferred. Additionally, they have submitted that in the lower court, it was clear that the sums of money that is claimed in the counter-claim was expressed to be in USA dollars. It did not demonstrate the equivalent in Kenya Shillings and that is the reason why the application was dismissed. Finally, they have submitted that the applicant has delayed in filing and prosecuting this application in view of the trial date which was set down for hearing on 9/10/2017. In terms of time computation, there is a delay of over 1 year. They further submitted that this delay constitutes an abuse of the court.

5. I have considered the submissions of the applicant and the authorities cited in the submissions.

6. In the light of the affidavit evidence, the submissions of both counsel and the authorities cited, I find the following to be the issues for determination in this application.

1. Whether or not the applicant has made out a case for the grant of an application for transfer on the basis of lack of pecuniary jurisdiction in the court of the Chief Magistrate to hear and determine the matter.

2. Who bears the cost of this application.

Issue No. 1

I find that the Chief Magistrate's court has pecuniary jurisdiction not exceeding Sh. 20 million in terms of section 7(1) (a) of the Magisterial Court's Act. It therefore lacks jurisdiction to entertain and determine this matter. I agree with the principle of law pronounced in the *Owners of Motor Vehicles "Lillian S" v. Caltex Oil Kenya (1989) KLR1* that jurisdiction is everything. In the circumstances, I find that the applicant is entitled to have the suit transferred to the High Court in terms of section 18 of the Civil Procedure Act (Cap 21) Laws of Kenya.

Issue No. 2

As regards costs, I find that the applicant has succeeded in his application but is not entitled to his costs because of the delay in filing and prosecuting this application. If the applicant had converted USA dollars 220,000/- into Kenya Shillings which was the equivalent of Sh.22 million as shown in his amended counter-claim, the trial magistrate would have ruled that she did not have jurisdiction to entertain and determine the matter. In the circumstances, the applicant will not have the costs of this application. Instead, the respondents will have the costs of this application.

Ruling delivered in open court this 16th day of November, 2017 in the presence of Mr. Kiptoo holding brief for Mr. Arusei for applicant and Mr. Ombati holding brief for Mr. Onduso for the respondents.

J. M. Bwonwonga

Judge

16/11/2017