



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
MISCELLANEOUS APPLICATION NO. 92 OF 2014

CENTURION SYSTEM LIMITED :::::::::::::::::::::::::::::::::::::::1ST APPLICANT

KEVIT DESAI ::,::::::::::::::::::::::::::::::::::::: 2ND APPLICANT

VERSUS

KGT (UK) LIMITED ::::::::::::::::::::::::::::::::::::::: 3RD DEFENDANT

R U L I N G

1. The Notice of Motion before me is dated **11th March 2014** and filed in Court on **12th March 2014**. It is expressed to be brought under **Order 51 Rules 1, 10 (1) and 13 (2)** of the **Civil Procedure Rules** as well as **sections 3, 3a and 18** of the **Civil Procedure Act**. The Applicants seek for the following orders:-
 1. ***That Nairobi Chief Magistrate's Court (Milimani Commercial Courts) Civil Case No. 5875 of 2012 between the Applicants and the Respondent be ordered withdrawn and transferred to this Honourable Court for hearing and final disposal.***
 2. ***The Respondent be ordered to pay the costs of this application.***
2. The application is based on the grounds stated on the face of the application and is supported by the affidavit of **Allan George Njogu Kamau**, an Advocate, sworn on **11th March 2014**.
3. Briefly, the Applicants were sued by the Respondent in the Chief Magistrate's Court in Milimani Commercial Courts **Civil Case No. 5875 of 2012** vide a **Plaint** dated **12th September 2012**. The Applicants then filed their statement of Defence together with their counterclaim on **17th October 2012**. It is deponed by the Advocate, that in the Counterclaim the Applicants demands from the Respondent a sum in the order of **US\$ 167,500** which at current market rates translates to a sum of **Kshs. 14,405,000/=**. He further depones that the subordinate Court has no pecuniary jurisdiction to entertain the said counterclaim and hence the entire suit.
4. It is therefore the Applicants' case that it is imperative that the said suit be withdrawn from the subordinate Court and transferred to this Honourable Court for hearing and final disposal. The Advocate states that he already drew the attention of the Respondent's Advocates to the lack of jurisdiction of the subordinate Court. He further states that the said Advocates responded indicating that they had no objection to having the case in the subordinate court withdrawn and transferred to this Court.
5. The Respondent did not file any response to the current application and therefore the same is not opposed.
6. I have considered the application as well as the supporting affidavit. I therefore take the following

view of the matter. The subordinate Court indeed has no pecuniary jurisdiction to determine the current suit with a Counterclaim of about Kshs. **14,405,000/=**. The Magistrate's Court Act (cap. 10) caps the pecuniary Jurisdiction of a Chief Magistrate's Court at **Kshs. 7 million; See section 5 of the Act**. In the circumstances it is appropriate to transfer the suit in the Magistrate's court to this Honourable Court which has jurisdiction.

7. The upshot is that the Applicants' Notice of Motion filed on **12th March 2014** is allowed. The costs of the application shall be in the cause.

DATED, READ AND DELIVERED AT NAIROBI THIS 13TH DAY OF JUNE 2014

E. K. O. OGOLA

JUDGE

PRESENT:

No appearance for Applicants

No appearance for Defendant

Teresia – Court Clerk