



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISCELLANEOUS CIVIL SUIT NO. 332 OF 2014
DANCAN OHIENG' OBUON & JEMIMAH AKINYI T/A
IMAGE PROFILING ADVERTISING & DESIGN AGENCY....PLAINTIFF
VERSUS
ROTO MOULDERS LIMITED.....DEFENDANT

RULING

1. The plaintiff has requested this court to transfer his case, **CMCC NO. 4079 of 2013**, from the Chief Magistrate's Court, Milimani, to the High Court.
2. The reason for seeking the said transfer was that the Chief Magistrate's Court no longer has jurisdiction to hear and determine the case.
3. The claim is said to exceed Kshs. 16,000,000/-, currently. However, Miss Kibiwott, the learned advocate for the applicant, pointed out that at the time when the suit was filed, the claim was for a sum of Kshs. 2,000,000/-. Therefore, as far as the plaintiffs were concerned, the magistrate's court had jurisdiction at the time when the suit was filed.
4. Thereafter, the sum claimed increased significantly, due to the interest which the plaintiffs were asking for.
5. Mr. Njoroge, the learned advocate for the defendant, submitted the High Court could not transfer a suit from the lower court if that lower court lacked jurisdiction in the first instance.
6. In the opinion of the defendant, the plaintiffs should have seen that when interest is calculated at the rate of 7 ½ per month, as they had asked for, the magistrate's court would lack jurisdiction soon after the suit was filed. That being the case, the defendant expressed the view that the plaintiffs had not been diligent, and that they should not therefore be helped by the court.
7. As far as the defendant was concerned, the plaintiffs ought to withdraw the original suit and thereafter they can always file another suit at the High Court.
8. The defendant cited the authority of **CHARLES NDUNGU KIRORI VS ESTHER MUTHONI MUNGAI (NKU) MISC. CIVIL APPLICATION NO. 396 OF 2011**, to back its submissions.

9. In that case, Omondi J. dismissed the plaintiff's request to transfer a case from the Nyahururu Principal Magistrate's Court to the Naivasha Chief Magistrate's Court.

10. The accident which gave rise to the suit had occurred at Naivasha. Therefore, the learned Judge observed that by dint of the provisions of Section 15 of the Civil Procedure Act, the suit could have been filed either at Naivasha or at a court within the local limits of whose jurisdiction the defendant resides.

11. Having made that observation, the learned Judge declined the request to transfer the case because the suit was *void ab initio*, as it had been filed at a court which had no jurisdiction.

12. The justification for not transferring such a case was captured very well by Ringera J. (as he then was) in **OMWOYO VS AFRICAN HIGHLANDS & PRODUCE CO. LTD [2002] 1 KLR 698**;

"It may be that to dismiss the application for transfer would punish the plaintiff for the mistake of his advocate, but if the court has no jurisdiction to do something it cannot do so in what is said to be in the interests of justice.

The interests of justice are forever best served by upholding the law and not bending it to suit the individual circumstances of cases before the court. But even if the court had discretion in the matter, it may be asked whether to file a suit in a court without jurisdiction may be treated as the kind of mistake by an advocate which the court may over-look...The time has come for legal practitioners to shoulder the consequences of their negligent acts or omissions like other professionals do in their fields of endeavour".

13. I am in full agreement with Ringera J, in that regard.

14. Having so said, I now need to ask the question as to whether or not the Milimani Chief Magistrate's Court lacked jurisdiction at the time when the suit was filed.

15. The defendant's advocate has actually admitted that that court had jurisdiction. The admission is in the submissions made before me, in this application, when the advocate said that the Magistrate's Court "*would lack jurisdiction soon after the suit was filed*".

16. Apart from that, the defendant's defence expressly stated, at paragraph 7;

"The jurisdiction of his honourable court is admitted".

17. Clearly, therefore, the Chief Magistrate's Court had the requisite jurisdiction at the time the suit was filed. That court had jurisdiction because the principal claim was for Kshs. 2,033,500/-, which is well within the jurisdiction of the Chief Magistrate's Court.

18. Therefore, the only grounds upon which the defendant opposed the application are without merit.

19. Secondly, if the claim is now in excess of Kshs. 16,000,000/- as alluded to by the plaintiff, then the Magistrate's Court lacked jurisdiction to hear and determine the case.

20. In the event, I do now order that the case be transferred from the Chief Magistrate's Court, Milimani, to the High Court, Commercial Division.

21. The costs of the application shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 10th day of December 2014.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Mrs. Chirchir for the Plaintiffs

Njoroge for the Defendant

Collins Odhiambo – Court clerk.