



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CIVIL SUIT NO. 350 OF 2010

ROMANUS OKENO.....PLAINTIFF

VERSUS

EQUITY BANK LTD.....DEFENDANT

RULING

The applicant herein seeks the following orders in his application dated 16-12-2010:-

(a) That Kisumu CMCC No. 230 of 2008 (Romanus Okeno –VS- Equity Bank Ltd) be transferred from the Chief Magistrate’s court to the High court for hearing and final determination.

(b) Costs.

The said application is premised on his affidavit sworn on 16-12-2010. The gist of his application is that the lower court is not seized with the pecuniary jurisdiction to entertain his suit if the amendments he intends to do are allowed. Initially the value of the subject matter when he filed the suit in the lower court was Kshs. 400,000/= but owing to the loss of use of the lorry (the subject matter) he will be demanding an excess of Kshs. 4 million from the respondent. He has further attached the proposed amended plaint.

The respondent filed grounds of opposition stating that the same was a nullity in law as the court did not have jurisdiction. Section 17 and 18 of the Civil Procedure Act Cap 21 Laws of Kenya is the relevant portion allowing this court to entertain this application.

I have perused the said section and nowhere does it allow this court to transfer the suit when there is no jurisdiction from the onset. There is nothing to show that the monetary value of the suit property exceed Kshs. 4 million. What the applicant has exhibited is a proposed amended plaint. Secondly, if the value is Kshs. 400,000/= then the lower court is still seized with jurisdiction. If the amendment is allowed and the value raises to Kshs. 4 million the lower court’s jurisdiction shall be ousted. As it were and as things stand now the lower court has jurisdiction and I cannot allow the applicant to speculate. Let him carry out the necessary amendments. If he finds that the same shall oust the lower court’s pecuniary jurisdiction then he should file it within the court that has the relevant jurisdiction.

Beside this, the applicant ought to have done his homework well prior to filing of the suit. This court cannot be used to aid such a party. On this question of transfer of suit it has been held that:-

“The high court cannot exercise its discretion to transfer a suit from one court to another if the suit is filed in the first place in a court which does not have the pecuniary and or territorial jurisdiction to try it”.

See **Omwoyo –VS- African Highlands & Produce Co. Ltd [2000] KLR 698**. In as much as the plaint is yet to be amended, this court cannot transfer the lower court suit to the high court. The application is premature. I shall disallow it with costs to the respondent.

Dated, signed and delivered at Kisumu this 20th day of January, 2012.

**H.K. CHEMITEI
JUDGE**

HCK/va