



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

Miscellaneous Civil Application 2 of 2010

RAPHAEL KARANI WACHIRA..... PLAINTIFF/APPLICANT

VERSUS

SAROVA HOTELS LIMITED.....DEFENDANT/RESPONDENT

RULING

The Applicant herein has filed an application dated 14/10/2009 for orders to transfer Embu SPMCC NO. 129/08 to Embu High Court for hearing and determination. The reason being that the SPM's Court has no jurisdiction to deal as his claim is over 3 million shillings.

The application is supported by his affidavit sworn on 14/10/2009.

The application has been opposed on the ground that if the claim was filed in a Court without jurisdiction it can't be transferred on that ground alone.

He relied on the case of **CHARLES OMWATA OMWOYO –VS- AFRICAN HIGHLANDS AND PRODUCE HCC MISC. APPLICATION NO.308 OF 2002 NRB.**

I have looked at the plaint in SPM CC No.129/08. The Plaintiff does not indicate what he expects as special damages. All he states is that he wants unpaid salary plus other benefits from 8th October 2004.

2. General and special damages for wrongful termination or dismissal from employment.

And if he knew that his claim was over 3 million then he filed his claim in a Court without pecuniary jurisdiction. And if that be the case then following the case of **KAGENYI –VS- MISIRAMO & ANOTHER [1968] E.A. 48** and persuaded by the holding in the case of **CHARLES OMWATA OMWOYO (supra)**. I do find that section 18 Civil Procedure Act is not available to the applicant. He should have withdrawn the suit therein and filed a fresh suit in the High Court. The Applicant is not precluded from proceeding with his case in the lower court as the same has not been decided or withdrawn. All depends on what he is able to prove. I do appreciate that the Applicant is not represented in the matter before the lower Court. It's also not clear what informed the trial Magistrate's decision that the lower Court lacked jurisdiction. If he chooses to proceed before the lower Court then his matter should proceed before the Chief Magistrate Embu. And for the reasons above I do find that the

application lacks merit. I dismiss it with costs.

DELIVERED, SIGNED AND DATED I AT EMBU THIS 5TH DAY OF JUNE 2012.

H.I. ONG'UDI

JUDGE

In the presence of;

M/s Muthike for Wachira for Respondent

Njue – C/c