



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**COMMERCIAL & TAX DIVISION – MILIMANI**

**MISC. CIVIL APPLICATION NO.938 OF 2010**

**KENYA COMMERCIAL BANK LTD. .... APPLICANT**

**VERSUS**

**CATHERINE NJERI ANGOTE ..... RESPONDENT**

**R U L I N G**

By an application by Notice of Motion dated 30<sup>th</sup> September, 2010 and taken out under **Sections 3A and 18 (1)(a) of the Civil Procedure Act** and all other enabling provisions for the law, the Plaintiff/Applicant applies for orders that –

- 1. Kiambu SPMCC No.213 of 2009, Kenya Commercial Bank Ltd. v. Catherine Njeri Angote be transferred to the Chief Magistrate’s Court at Nairobi, Milimani Commercial Courts for hearing and final disposal.***
- 2. The costs of this application be in the Cause.***

The application is supported by the annexed affidavit of Wamaitha Kang’ethe, the Advocate having the conduct of this matter on behalf of the Applicant, and is based on the following grounds –

- (a) That the suit was filed on 4<sup>th</sup> August, 2009 for recovery of a sum of Kshs.1,054,265.52 together with interest at the rate of 16% p.a.***
- (b) On 20<sup>th</sup> May, 2010 the Honourable Mrs. D.A. Okundi, Principal Magistrate at the Kiambu Law Courts made an order staying the suit pending its transfer to a Court with proper jurisdiction.***
- (c) There is no Magistrate at the Kiambu Law Courts with proper jurisdiction to hear and determine the suit.***
- (d) It is in the interests of justice that the said suit be transferred for expeditious disposal of the same.***

When this matter came for hearing before this Court, Mr. Mugalo held brief for Ms. Wamaitha but there

was no appearance or representation for the Defendant. The record shows that the Defendant is represented by the firm of Kinoti & Kibe, Advocates and that they were duly served with the hearing notice for today, and that the service was effected on 17<sup>th</sup> December, 2010. That was about two months ago today and the Court was satisfied that they were served in sufficient time to attend Court. However, not only did they fail to attend Court, but they also failed to file any replying affidavit or grounds of opposition. In those circumstances, the Court found that the application was unopposed and that the Plaintiff was entitled to the orders prayed for.

In addition to the above, the application is obviously meritorious since there is no Magistrate with the requisite pecuniary jurisdiction at the Kiambu Law Courts and therefore it is in the interests of justice that the matter be transferred to a Court with that jurisdiction. The Defendant will not be prejudiced by the transfer in any way as the Court in which the matter now lies has no jurisdiction.

For the above reasons, I grant the orders as prayed and direct that –

***(i) Kiambu SPMCC No.213 of 2009, KENYA COMMERCIAL BANK LTD. v. CATHERINE NJERI ANGOTE be and is hereby transferred to the Chief Magistrate's Court at Nairobi, Milimani Commercial Courts for hearing and final disposal.***

***(ii) The file in respect thereof be placed before the Chief Magistrate at Milimani Commercial Courts on 10<sup>th</sup> March, 2011 for hearing directions.***

***(iii) Costs in the Cause.***

It is so ordered.

**DATED and DELIVERED at NAIROBI this 18<sup>th</sup> day of February, 2011.**

**L. NJAGI  
JUDGE**