



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. CIVIL APPLICATION NO. 125 OF 2010

ROSEMARY WAMBUI

MIANO.....APPLICANT

VERSUS

**KENYA COMMERCIAL BANK KERUGOYA
BRANCH.....RESPONDENT**

R U L I N G

1. **Rosemary Wambui Miano**, the applicant herein seeks to have **SRMCC No. 58 of 2009** filed by her in **Gichugu Court** transferred to the High Court of Kenya at Embu.
2. The application is opposed by Kenya Commercial Bank Ltd. who is the defendant in the Gichugu suit (hereinafter referred to as the respondent).
3. I have given due consideration to this application. It is apparent from the affidavit in support and the annexures thereto, that the applicant seeks to have the suit transferred to the High Court because she intends to amend her claim to include a prayer for judgment for Kshs.5,477,065 being the value of goods and stock allegedly removed from the applicants' premises by the respondent and carted away.
4. From the copy of the amended plaint it is evident that the applicant's original claim was for injunction and also return of her property and stock which were removed and confiscated by the respondent. The value of the property and stock being well above the pecuniary jurisdiction of the Gichugu court whose jurisdiction is admitted to be KShs.800,000/= only, it is evident that the applicant's claim was beyond the pecuniary jurisdiction of the Gichugu Court from its inception.
5. As was stated by the Court of Appeal in **Nyandundo Primary School & Another Vs Stephen Waweru, Civil Appeal No. 179 of 1999** this court has no jurisdiction to transfer a suit from one court to another unless the suit was in the first instance filed in the court with jurisdiction to entertain the suit. In this case the applicant having filed her suit in a court which lacks jurisdiction to entertain her claim, she

has no alternative but go back to the drawing board, withdraw the suit filed in the court lacking jurisdiction, and file a new suit before a court with appropriate jurisdiction.

6. Accordingly the application dated 3rd November 2010 is dismissed with costs.

H. M. OKWENGU

JUDGE

Delivered, dated and signed at Embu this 7th day of February 2011.

In the presence of:

OKWARO HOLDING BRIEF FOR MIANO ADVOCATE FOR THE APPLICANT

ABSENT.....ADVOCATE FOR THE RESPONDENT

NJUE.....COURT CLERK