



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
CIVIL SUIT MISC. NO. 1053 OF 2010

JUANCO TRADING COMPANY LTD.....PLAINTIFF

VERSUS

SGS KENYA LIMITED.....1ST DEFENDANT
KENYA SHELL LIMITED2ND DEFENDANT

RULING

The Applicant in the Notice of Motion dated 22nd November 2010, prays that Milimani Chief Magistrate's Suit No **EJ 2356 of 2003** be transferred to the High Court (Milimani Commercial Court) for hearing and determination on the ground that the value of the subject matter, being KShs. 6,541,944/- surpasses the pecuniary jurisdiction of the subordinate court. The figure was arrived at following an audit conducted by an audit firm, M/S King'ang'i & Company, a report of which is annexed as an exhibit in the Applicant's Further Affidavit filed on 28th January 2011. The report is dated 7th February 2003.

The application is opposed on the strength of the 2nd Defendant's Grounds of Opposition filed on 21st January 2011, and the Replying Affidavit sworn by its Legal Officer, Alison Kariuki who depones, *inter alia*, that the 2nd Defendant would be greatly prejudiced if the orders sought herein were allowed, owing to the fact that the suit was filed way back in 2003. The Respondent contends that since the enhancement of the claim before the Resident Magistrate's Court would necessitate the amendment of the Plaintiff, protracted delay would ensue. The 2nd Defendant contends that it would be more difficult now to secure witnesses with astute memories to testify on the additional matters than it would have been had the Applicant amended the Plaintiff when the consent order leading to the enhanced claim, was recorded on 29th February 2008 as per annexure "JW1" of the Supporting Affidavit.

The 2nd Defendant/Respondent contends further that, according to the consent order, the issue of excess of jurisdiction was to be taken care of by the filing of a fresh suit if the Plaintiff's claim exceeded the pecuniary jurisdiction of the subordinate court. The 2nd Defendant/Respondent prays therefore that the application be dismissed with costs.

In the Grounds of Opposition filed, the 2nd Defendant/Respondent states that the application is frivolous and an abuse of the process of the court since the consent filed in **H.C.C.C. NO. 288 of 2008 (O.S)** (annexture "JW1" of the Supporting Affidavit) provided that the Plaintiff/Applicant files a fresh suit if jurisdiction was in issue. I have perused the consent recorded on 29th February 2008, in **H.C.C.C. No. 288 of 2005 (O. S.)** and have noted that the relevant order was recorded *inter alia* as follows:-

