



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**Miscellaneous Application 1028 of 2009**  
**L & J. INTERNAITONALI NVESTMENTS LTD ..... PLAINTIFF**

**VERSUS**

**AFRISPARES COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SETH STEVE OKUTE ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff instituted Milimani CMCC NO. 1138 OF 2009. The defendant intends to file a counter claim which they contend will exceed the monetary jurisdiction of the Chief Magistrate's Court . The defendants have therefore filed a notice of motion dated 23<sup>rd</sup> November 2009 seeking for orders that the CMCC CASE NO. 1138 OF 2009 before the Chief Magistrate's Court Milimani be transferred to the High Court for hearing and determination.

2. The application is supported by the grounds on the body thereto and the matters deposed to in the supporting affidavit of **Karsan Chhaya**. It is contended that by the claim stated in the counter claim, where the defendant is claiming against the plaintiff and another party a sum of Ksh.2.9 million with costs and interests the total is in excess of the Chief Magistrates Jurisdiction. The interests chargeable is Ksh.50,000/- per month which will exceed the jurisdiction of the Chief Magistrate's Court. It will be expeditious and in the interest of justice to have both the suits and the counter claim tried together at the High Court.

3. This application was opposed on the grounds that the party against whom the counter claim is directed is not a party to

CMCC NO. 1138 OF 2009. Moreover the counter claim seeks for a sum less than 3 million which falls within the jurisdiction of the Chief Magistrate.

4. Under section 18 of the Civil Procedure Act, the High Court is given power to withdraw any suit or other proceedings pending in any court subordinate to it and thereafter try or dispose of the same. The applicant contends that the counter claim exceed the jurisdiction of the Chief Magistrate's Court because the claim has interest accruing at the rate 50,000 per month. However the award of interests and costs is within the discretion of the trial court. Accordingly this counter claim seeking for judgment of 2.9 million is within the pecuniary jurisdiction of the Chief Magistrate . For this reason I decline to transfer the matter and dismiss this application with costs to the respondent.

**RULING READ AND SIGNED ON 30<sup>TH</sup> JULY 2010 AT NAIROBI.**

**M.K. KOOME**  
**JUDGE**