



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURT
MISC CIVIL NO. 552 OF 2010

RAINBOW MANUFACTURERS LIMITED.....
PLAINTIFF
VERSUS
NATIONAL BANK OF KENYA.....
.....DEFENDANT

RULING

1. The notice of motion dated 9th June, 2010 seeks for one principal orders as follows:-
2. According to the applicant, the suit herein was filed before the Chief Magistrate's Court, and it is necessary to have it transferred to the High Court so that the plaintiff can bring an amendment to introduce a further claim of Ksh. 7,492,786.06 being damages for loss of sales and revenue and also a claim for the loss of reputation. This claim as per the proposed amendment is beyond the monetary jurisdiction of the Chief Magistrates court. This application is brought under the provisions of section 18 of the Civil Procedure Act which provides
3. Counsel for the applicant submitted that the suit should be ordered transferred to the High Court which is regularly done as the Court has powers to do so even suo motto without a formal application. The applicant realized that there was a claim that was omitted when the suit was filed before the Chief Magistrate's Court. Moreover, the respondent will not suffer any prejudice if the suit is transferred to High Court.
4. This application was opposed; Counsel for the respondent relied on the grounds of objection on points of law which challenges the legal basis of this application. It was argued that this suit was originally filed in a Court which lacked jurisdiction, thus there is nothing to transfer to the High Court. Moreover when the suit was filed before the Chief Magistrate's Court, the plaintiff was aware of its entire claim. What is sought to be introduced as general damages for loss of business and revenue, is part of the same transaction. Counsel urged the court to dismiss this application which he termed as an abuse of the court process.
5. The issue for determination in this application as I see it , is whether this Court has jurisdiction to transfer a suit that was filed before the Chief Magistrate's Court after the applicant has discovered that Court lacks jurisdiction to deal with an additional claim. The applicant wishes to transfer the suit to the High Court and then amend it to include a claim that exceeds the jurisdiction of the trial court. This application is opposed on the grounds that the provisions of section 18 of the Civil Procedure Act was not confer powers to the High Court to transfer a suit from the lower court to the High Court especially because the suit was filed in a court that lacked jurisdiction it must be null and void, thus there is no suit to transfer.
6. While determining a similar issue on whether the High Court can exercise its powers under section 18 of the Civil Procedure Act to transfer a suit from the lower court which lacked jurisdiction, **Ringera, J**

(as he then was) in the case of **Omwoyo V African Highlands & Produce Co Ltd {2002} 1 KLR P.698** held that;

1. *“The High Court cannot exercise its discretion to transfer a suit from one court to another if the suit is filed in the first place in a court which does not have the preliminary and/or territorial jurisdiction to try it.*
2. *The Nairobi Resident Magistrate’s Court did not have the jurisdiction to entertain the plaintiff’ suit as the lowest court of competent jurisdiction to handle it was the Kericho Magistrate’s Court.*
3. *It may be that to dismiss the application for transfer would be to punish the plaintiff for the mistake of his advocate but if the court has no jurisdiction to do something it cannot do so in what is said to be in the interests of justice.”*
7. When the suit was filed before the Chief Magistrate’s Court, the plaintiff sought for a declaration that the defendant was liable for the plaintiff’s losses and also claimed a sum of Ksh 399,009.85. The plaintiff now contends that the Chief Magistrate lacks jurisdiction to issue a declaratory order and intends to compute the general damages which amount to over 7 million . That is why he is seeking to transfer the suit to the High Court. As at the time the plaintiff filed the case seeking for declaration for payment of losses, surely they must have been aware that the damages would exceed the monetary Jurisdiction of the Chief Magistrate’s Court. The cause of action sought to be included is also part of the same events or transactions that happened in March 2007 before the suit was fixed, there are no new grounds.
8. The plaintiff chose the forum that lacks jurisdiction, a party cannot litigate in installments, and the plaintiff should have filed its case in the High Court. I am afraid this Court cannot order the transfer of a suit from a Court which lacks jurisdiction to the High Court. The plaintiff may have to withdraw the entire suit and file a fresh suit in the High Court while bearing in mind the principles of limitation, or contend with amending that claim to conform to that Court’s jurisdiction. For the aforesaid reasons, the application dated 25th June 2010 is disallowed with costs to the respondent.

Ruling signed and submitted for delivery on the 9th day of November 2010

MARTHA KOOME
JUDGE

Delivered and countersigned on 12th day of November 2010.

P KIHARA KARIUKI
JUDGE