



**Njuguna v All African Conference of Churches & another (Miscellaneous Civil Case 821 of 2009) [2010] KEHC 190 (KLR) (10 December 2010) (Ruling)**

*STEPHEN NJUGUNA v ALL AFRICAN CONFERENCE OF CHURCHES & ANOTHER [2010] eKLR*

Neutral citation: [2010] KEHC 190 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
MISCELLANEOUS CIVIL CASE 821 OF 2009  
MK KOOME, J  
DECEMBER 10, 2010**

**BETWEEN**

**STEPHEN NJUGUNA ..... PLAINTIFF**

**AND**

**ALL AFRICAN CONFERENCE OF CHURCHES & ANOTHER .... DEFENDANT**

**RULING**

1. The notice of motion dated 28 September, 2009 seeks for two principal orders as follows:-
  1. That CMCC 4149 of 2009 filed at the Chief Magistrate's Court Milimani be and is hereby transferred to this Honourable Court for hearing and determination.
  2. That the applicant be and is hereby granted leave to amend the plaint in terms of the annexed Draft Amended plaint and the same be filed as the Court may direct upon transfer of the suit.
2. According to the applicant, the suit herein was filed before the Chief Magistrate's Court, and it is necessary to have the suit transferred to the High Court so that the plaintiff can bring a further claim of Ksh. 16,390,000/= which 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

“On an application of any of the parties ad after notice to the parties to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage-

  - (a) transfer any suit, appeal or other proceedings pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the matter; or



- (b) withdraw any suit or other proceedings pending in any court subordinate to it, and thereafter –(i) try or dispose of the same; or(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or(iii) retransfer the same for trial or disposal to the court from which it was withdrawn.
3. Counsel for the applicant submitted that although there is a prayer for amendment, that can wait until the suit is transferred to the High Court because the substantive prayer is for the transfer of the suit from the chief Magistrate’s court to the High Court. Suits are regularly transferred and the Court has power to do so even on its own motion. The applicant realized that there was a claim that is 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 replying affidavit as well as preliminary points of law which challenges the legal basis of this application. It was argued that this suit was originally filed in a Court which lacks jurisdiction, thus there is nothing to transfer to the High Court. Moreover the application presumes that the Court can make an order to amend the pleadings before transfer. The suit also does not disclose any reasonable cause as the applicant is seeking for general damages for breach of contract. Counsel urged the court to dismiss the application.
  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 CPR do 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 is null and void.
  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’s 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 two principal orders; that is, a permanent order of injunction restraining the defendants or agents from interfering with the plaintiff’s operation and business in the printing press. The plaintiff also sought for general damages for breach of contract. The plaintiff now contends there he intends to compute the general damages which amount to over 16 million and 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 general damages, he must have been



aware that the damages for breach of contract would exceed the monetary Jurisdiction of the Chief Magistrate's Court.

8. The plaintiff chose the forum that lacks jurisdiction, 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 a claim within that Court's jurisdiction. For the aforesaid reasons, the application dated 28<sup>th</sup> September, 2009 is disallowed with costs to the respondent.

**RULING SIGNED AND SUBMITTED FOR DELIVERY ON 1<sup>ST</sup> NOVEMBER, 2010**

**DELIVERED AND COUNTERSIGNED ON 10<sup>TH</sup> DAY OF DECEMBER, 2010.**

**MARTHA KOOME**

**JUDGE**

**MURUGI G. MUGO**

**JUDGE**

