

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Miscellaneous Civil Case 196 of 2009

JOHN GIHUI MITHAMO APPELLANT

VERSUS

S.S. METHA & CO. LTD RESPONDENT

RULING

The Plaintiff has moved the court by way of Notice of Motion dated 3rd March, 2009. The Notice of Motion is brought under Section 18(1) (b) (1) and Section 3A of the Civil Procedure Act. In the application the Plaintiff seeks for orders:-

- 1. That Nairobi CMCC No. 15161 of 2007 John Githu Mithamo vs. S.S. Metha & Company Limited be transferred from the Chief Magistrate’s Court to the High Court.**
- 2. That the costs be in the cause.**

The application is supported by the affidavit of *Jeremy Njenga* Advocates. In the affidavit it is stated that at the time of filing suit it was believed that the Magistrate had the pecuniary jurisdiction to hear and determine the matter. That since then the medical condition of the Plaintiff has deteriorated necessitating several operations thus escalating the medical bills.

On its part the defendant has raised a Preliminary Objection. The Notice of Objection and grounds of Operations we filed on the 19th March, 2009. The gist of the Preliminary Objection is that.

- 1. The application offends the Provisions of Order 18 of the Civil Procedure Act.**
- 2. That the lower court lacked pecuniary jurisdiction and therefore the suit is not transferable to the High Court.**

The Defendant’s counsel cited several authorities in support of her position.

The issue before the court for determination is whether the court can invoke section 18 and transfer the case from the Subordinate Court to the High Court.

The Plaintiff’s application is clear, the Chief Magistrates Court has no pecuniary Jurisdiction to handle the matter hence this application. In **OWMOYO vs. AFRICAN HIGHLANDS PRODUCE LTD (2002) 1 KLR 698 AT 699** Ringera J (as he then was) invoked the ruling in **KAGENYI vs. MISIRAMO & ANOTHER** (1908) G.A 118, Sir Udoma Udoma CJ held:-

“That an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first place brought to a court which has jurisdiction to try it. In that case the appellant had sought to transfer a suit from the Magistrate’s Court to the High Court on the basis that the claim exceeded the pecuniary jurisdiction of the lower court.”

Guided by the above mentioned authority, I find that the Chief Magistrates court lacked pecuniary jurisdiction in the first place to hear this case. Indeed this has been admitted by the Plaintiffs counsel. It therefore follows this court cannot transfer to itself a case from a court that lacked jurisdiction. The

application is therefore dismissed with costs.

Dated and delivered this 27th May, 2009.

ABIDA ALI ARONI

JUDGE