



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Miscellaneous Civil Application 66 of 2008

AFRICAN BANKING CORPORATION.....1<sup>ST</sup> APPLICANT

ISAACK GITONGA RINGERA T/A VIEWLINE AUCIONEERS...2<sup>ND</sup> APPLICANT

V E R S U SAPOLLO NTEERE AMBUTU.....RESPONDENT

CIVIL PROCEDURE AND PRACTICE

v *Practice – Transfer of suit – whether suit originating in court which has no jurisdiction*

*trying it can be transferred – Civil Procedure Act , Section 18 (cap 21 laws of Kenya*

R U L I N G

A Motion was argued before me on 4<sup>th</sup> May 2009 for an order to withdraw and transfer to this court **Maua Principal Magistrates Court Civil Case No. 96 of 2006** filed by the Respondent. The motion is dated 16<sup>th</sup> September 2008 and was filed on 24<sup>th</sup> September, 2008. The principal ground on the face of the Motion, and reiterated in the Supporting Affidavit of the Applicant Geoffrey Karanja sworn on 16<sup>th</sup> December 2008 is that:-

**“the 1<sup>st</sup> Defendant intends to amend its statement of defence to include a counter-claim of Ksh.2,234,355/- which exceeds the pecuniary jurisdiction of the Principal Magistrate at Maua Law Courts.”**

The Motion was opposed by the Plaintiff/Defendant who in Grounds of Opposition dated 18<sup>th</sup> October 2008 and filed on 21<sup>st</sup> October 2008, gave four reasons why the motion should not be granted:-

- (i) the orders sought cannot be granted since the lower court supposedly has no jurisdiction.**
- (ii) the application is belatedly brought to court.**
- (iii) the application does not meet the benchmarks for transfer of cases, and**
- (iv) the court has no jurisdiction to transfer the suit “owing to the prevailing circumstances in the lower court”**

The sole issue is whether an order for withdrawal and transfer of the case should be made. The sole ground for seeking the transfer, is that the plaintiff intends to amend the Defence to include a counterclaim of Ksh.2,234,355/- I did not hear the Plaintiff’s counsel nor indeed the Respondent’s/Defendant’s counsel cite any of the benchmarks for transfer of cases.

I did not hear either counsel say that the principal matters to be taken into consideration in applying for transfer of a case are the balance of convenience, the question of expense, interests of justice and possibilities of undue hardship and if the court is left in any doubt as to whether under all the circumstances it is proper to order to transfer, the application must be refused. See the case of

**KAGENYI VS MUSIRAMU** [1968] EA. 43 at p. 45.

These I think are the questions which the Respondent's Counsel referred to in their grounds of opposition, that the application does not meet the benchmarks for transfer of cases, and on those grounds alone, the application should be refused. But there is another reason why the application should be refused. It is the ground of jurisdiction. The Applicants say that they intend to file a defence to include a counter-claim for Ksh.2,234,355/- which claim exceeds the pecuniary jurisdiction of the Principal Magistrate at Maua Law Courts.

If the Applicant "**intends**" it means it has not yet filed such an amended defence, and counter-claim. It means there is yet no such pleading. The court at Maua has jurisdiction so far as the Maua Case now stands. The discretion donated to this court by Section 18 of the Civil Procedure Act is on the basis of an existing suit with complete pleadings and not unfounded pleadings. To grant the Applicants the orders they seek is but to encourage not just bad pleading but **forum shopping** and to approve the transfer of a case on speculative grounds.

For those reasons, the Applicant's motion dated 16<sup>th</sup> September 2008 and filed on 24<sup>th</sup> September 2008 is dismissed with costs to the Respondent.

Dated, signed and delivered at Meerut this 15<sup>th</sup> day of May 2009.

**M. J. ANYARA EMUKULE**

**JUDGE.**