

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Misc Appli 179 of 2009

DR. KENNEDY GOGO.....PLAINTIFF

VERSUS

ROYAL MEDIA SERVICES.....DEFENDANT

RULING

The applicant in the notice of motion dated 12th June 2009 seeks orders for the transfer of Civil Suit No. 938 of 2008 from the Chief Magistrate’s Court to the High Court. The applicant claims that the said suit was erroneously filed in the lower court on 17th September 2008, and that it was not until the same was set down for hearing that the error or inadvertence was discovered. This is the only ground advanced in the body of the application although, in the supporting affidavit, the applicant states that the intention was to file the suit in the High Court (*as will be seen from the title of the plaint*) and that the damages sought exceed the pecuniary jurisdiction of the subordinate court.

The application is opposed on the strength of the defendant’s grounds of opposition dated 14th September 2009 in which the respondent, inter alia, casts doubt on the alleged inadvertence, given that it took the applicant 9 months to apply for a transfer and that the applicant had proceeded to set the suit down for hearing in the lower court.

Submitting in support of the application learned counsel Mr. Kibelion told this court that the error in filing the suit in the subordinate court was made by his law clerk. He also said that the damages sought exceed the pecuniary jurisdiction of the lower court, without, however, laying any basis for that submission. The issue of damages is not even made a ground in the application itself. Learned counsel for the respondent, Ms Mwangi asked the court to dismiss the application as an afterthought.

I have considered the application in the light of the submissions made before me, the facts as disclosed, as well as the law governing the transfer of suits. I also took it upon myself to call for the lower court’s file for perusal before arriving at my decision herein. After filing the suit in the lower court, the applicant obtained summons to enter appearance in that court and served the defendants herein. The defence filed and served upon the plaintiffs clearly referred to the proceedings as being:

“*IN (sic) CHIEF MAGISTRATE’S COURT AT NAKURU, CIVIL SUIT NO. 938 OF 2008.*”

A reply to the defendant’s statement of defence was filed in the same court, albeit titled:

“*IN THE HIGH COURT OF KENYA AT NAKURU.....*”

The invitation to fix a hearing date issued by the plaintiff/applicant on 27th October 2008 (*by registered post*) clearly referred to “**CMCC NO. 938/2008**”. The same reference appears in a subsequent invitation dated 3rd December, 2008, and the hearing notice dated 19th December 2008, served on the defendants on 13th January 2009.

Given the above, I am inclined to accept the respondent’s contention that the application herein is an afterthought and that there was no intention to file this suit in the High Court as is now claimed. There can be no inference of any inadvertence in the filing of the same in the subordinate court. The only error that this court can read from the pleadings, perhaps, is the reference to the High Court in the heading of the plaint.

No basis has been laid or evidence produced to support the claim that lower court’s pecuniary jurisdiction is inadequate. Therefore, there being no cause shown, to warrant the transfer of the suit, as is required under **Order LXVI rule 5(2)** of the **Civil Procedure Rules** I decline to grant the orders sought and hereby dismiss the application with costs to the respondents.

Dated signed and delivered at Nakuru this 23rd day of October 2009

M. G. MUGO

JUDGE