



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

Misc Application 324 of 2006

INTEREACT INVESTMENT LIMITEDAPPLICANT

V E R S U S

1. ABDUL GAFU GANATRA

2. KAHRIUNNISA GANATRARESPONDENTS

R U L I N G

There has been considerable delay in the preparation and delivery of this ruling. The same was occasioned by my serious illness in the year 2006 and the long attendant recuperation. The delay is regretted.

The application by notice of motion dated 5th April, 2006 seeks transfer of **Milimani CMCC No. 12649 of 2004** from that subordinate court to this court for disposal. It is made under section 18(1) (b) (i) of the Civil Procedure Act, Cap. 21 (the Act). Transfer is basically sought upon the ground that the arrears of rent alleged by the defendants in their statement of defence has removed the suit from the pecuniary jurisdiction of the subordinate court. There is a supporting affidavit sworn by one **FAKIR MOHAMED SIDI**, the managing director of the Applicant. The Applicant is the plaintiff before the subordinate court.

The Respondents, who are the defendants in the subordinate court, have opposed the application as set out in the replying affidavit sworn by the 1st Respondent filed on 28th April, 2006. The main ground of opposition emerging therefrom is that the suit before the subordinate court is a nullity in that it was filed in a court which had no jurisdiction in the first place to hear and determine it; this court therefore lacks jurisdiction to transfer it from that court to itself or to any other court. There is a supplementary affidavit sworn by one **DIPA JOKHIYA**, a director of the Applicant, in response to the replying affidavit.

I have considered the submissions of the learned counsels appearing, including the cases cited. I have also perused the pleadings before the subordinate court. By plaint dated 17th November, 2004 before the subordinate court the Applicant sought the following reliefs, *inter alia*:-

(i) A permanent injunction to restrain the Respondents from levying distress for rent against the Applicant's property on the premises known as **L.R. No. 336/105, Baba Dogo Road, Ruaraka, Nairobi** (original number 336/22/2).

(ii) A declaration that the Applicant is not liable to pay any rent to the Respondents until 31st January, 2005.

It was pleaded in the plaint, in effect, that pursuant to an unregistered lease agreement dated 1st February, 2002 the Respondents agreed to let to the Applicant the aforesaid premises for a period of 5 years and 3 months; that pursuant thereto the Applicant carried out extensive development to the property with the express consent and authority of the Respondents; that the parties agreed that the cost of that development would be deducted from the rent due; that therefore rent was so paid and none would be due until 31st January 2005; that the rent arrears of KShs.2,009,000/00 demanded by the Respondents was not due; and that the instructions given by the Respondents to an auctioneer to levy distress for arrears of rent in the sum of KShs. 2,130,000/00 were unlawful.

The value of the subject-matter of the suit as placed before the subordinate court was the rent arrears demanded by the Respondents. Those arrears, as pleaded by the Applicant in the plaint, were KShs. 2,009,000/00 or KShs.2,130,000/00. That was well within the pecuniary jurisdiction of the Chief Magistrate (KShs. 3 million). The suit as pleaded by the Applicant before the subordinate court was therefore within the jurisdiction of that court to hear and determine it.

In their statement of defence, the Respondents pleaded that as at the date of filing defence the Applicant owed arrears of rent in the sum of KShs. 3,969,200/00. They then applied before the subordinate court for an order to strike out the Applicant's suit on the ground of the court's lack of pecuniary jurisdiction. The ruling of the subordinate court was not placed before this court. But it would appear that the court held that in view of the arrears of rent stated in the defence (over KShs. 3 million) it no longer had jurisdiction to entertain the suit. It then stayed the proceedings for 30 days to enable an appropriate application to be made before this court; hence the present application.

The subordinate court was clearly acting in abundant caution; there was not as yet any counter-claim before it that removed the suit from its pecuniary jurisdiction. But obviously there was likely to be one at some point in the future. However, as things stood before the subordinate court, the suit as pleaded by the Applicant was well within the pecuniary jurisdiction of the Chief Magistrate as there was no counter-claim taking it outside that jurisdiction. The suit could properly remain before that court. But because of the likelihood of a counter-claim that would exceed the pecuniary jurisdiction of the subordinate court, it is best that the suit be brought to this court for disposal.

I will in the circumstances allow the application. **Milimani CMCC No. 12649 of 2004** be and is hereby withdrawn from the subordinate court and transferred to this court for disposal. Costs of this application shall be in the cause. There will be orders accordingly.

DATED AT NAIROBI THIS 23RD DAY OF AUGUST, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 24th DAY OF AUGUST, 2007