

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Civil Misc Appli 49 of 2007

M'RIMBERIA M'INOTI APPLICANT

VERSUS

KENYA POWER & LIGHTING COMPANY RESPONDENTS

RULING

This is an application for transfer of a suit from the court below to this court. It is based on the fact that following amendments to the Electric Power Act enhancing the penalty under Section 15(h) to Kshs.10,000/- per day which would translate to Kshs.4,270,000 for 427 days, which in turn would be above the pecuniary jurisdiction of the Chief Magistrate. The application is opposed and the respondent filed a replying affidavit in which it is stated that there is no amendment to the Electric Power Act as alleged. That the amended plaint referred to S.36 which is alleged to be the new amendment.

I have carefully considered these arguments. The application is said to be brought under Sections 3 and 3A of the Civil Procedure Act and "all other enabling provisions of the Law"

It has been held time without number that resort to the court's inherent jurisdiction will only be had where there is no express provision in the law. The power of the High Court to withdraw and transfer suits from a subordinate to itself is provided for in Section 18(a) of the Civil Procedure Act.

The main consideration being that the court seized of the suit must, in the first instance, have jurisdiction to try the suit. Otherwise the High Court has no jurisdiction to withdraw and transfer a suit from a court without jurisdiction.

The suit in question is dated 8th September, 2004 but was subsequently amended on 3rd April, 2006. The amendment to the Electric Power Act being relied on is of 1997. Clearly, the counsel who filed both the plaint and the amended plaint failed to consult the relevant law before instituting the suit. Had they done so, they would have found out the correct forum to file the suit.

Where a suit is filed in a court without jurisdiction the remedy of the plaintiff, is not in a transfer but rather in withdrawal of the same and filing it in the correct court, if the limitation period has not run-out. The alternative is to proceed in the lower court within its limits of pecuniary jurisdiction.

I find no merit in this application which I hereby dismiss with costs to the respondent.

Dated and delivered at Meru this 11th day of October, 2007

W. OUKO

JUDGE