



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**

**Civil Suit 174 of 1993**

**NELSON OMUNIALA**

**KOLI:.....PLAINTIFF**

**VERSUS**

**KENYA NATIONAL ASSURANCE CO:  
LTD.....DEFENDANT**

**RULING**

This is an application under the provisions of inter alia, Sections 18 (1) of the Civil Procedure Rules seeking one main order that:-

**“This suit be transferred from the High Court of Kenya Eldoret to the High Court of Kenya (Milimani Commercial Courts) Nairobi for trial and disposal.....”**

The application was opposed on the ground, inter alia that order the provisions of section 18 (1) of the Civil Procedure Act, the jurisdiction given relates to transfer of suits to subordinate courts . Section 18 (1) provides as follows:-

**“ 18 (1) on the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or on its own motion without such notice, the High Court may at any stage-**

**(a) transfer any suit, appeal or other proceeding pending before it for trial to any court subordinate to it and competent to try or dispose of the same or.....”**

It is clear from the foregoing provision that there is no power or jurisdiction given to the High Court to “transfer” a suit from the High Court sitting in one place to another under the aforesaid provision. The power is confined to transfer of suits to the subordinate courts.

I think that the appropriate provision under which the application ought to have been brought is section 46 of the Civil Procedure Act. This court cannot invoke the provision of section 3A as suggested when an express provision of the law exists to deal with the situation.

This court would have considered the application within the context of section 46 on its merit had the applicant placed before the court facts to or evidence to justify the application. The application by way of Notice of Motion did not have any affidavit in support and the grounds set out therein remained allegations.

I do hereby dismiss the application with costs to the Defendant.

**DATED AND DELIVERED AT ELDORET ON THIS 25<sup>TH</sup> DAY OF JULY,2006**

**M.K. IBRAHIM**

**JUDGE.**