



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Misc Appli 690 of 2006

CORNER HOLIDAY INN LIMITED.....1ST PLAINTIFF

PETER KIMEMIA NJOROGE2ND PLAINTIFF

VERSUS

ANDREW KURIA WANGUNYU..... DEFENDANT

R U L I N G

The applicants, **CORNER HOLIDAY INN LIMITED** and **PETER KIMEMIA NJOROGE** are the plaintiffs in Nairobi C.M.C.C. No. 9860 of 2004 (Milimani). They seek withdrawal of that suit from that court and transfer of the same to this court for hearing and determination. The application has been brought under the provisions of Sections 3A and 18 of the Civil Procedure Act Cap. 21 Laws of Kenya. Section 18 (1) (b) (1) gives the court discretion to

“(b) Withdraw any suit or other proceeding pending in any court subordinate to it and thereafter (i) try or dispose of the same”

The primary grounds for the application are that the 1st plaintiff’s business has grown considerably and as such the value of the subject matter of the suit has exceeded the pecuniary limit of the Chief Magistrates Court; that in his ruling delivered on 11.7.2005 in the said Nairobi C.M.C.C. No.9860 of 2004, the Learned Magistrate Were R.M. ordered the plaintiffs to file this application within 10 days of his ruling and that the defendant will suffer no prejudice by the transfer. The respondent Andrew Kuria Wangunyuu who is the defendant in the said suit opposes the application on the main ground that the application is wrong in law and untenable as the Chief Magistrates Court did not have jurisdiction in the first place.

I have read the application, the supporting affidavit together with the annexures thereto. I have also considered the Grounds of Opposition. Finally I have given due consideration to the submissions made to me by counsel. Having done so, I take the following view of the matter. Learned counsel for the respondent relied upon two decisions of Ringera J as he then was in **Adero & Another –vs – Ulinzi Sacco Society Ltd [2002] 1 KLR 577** and **Omwoyo –vs- African Highlands & Produce Company Limited [2002] 1 KLR 698** in which the Learned Judge held that the High Court cannot exercise its discretion to transfer a suit from one court to another unless the suit has been in the first instance brought to a court which has jurisdiction to try it.

In the matter at hand the Learned Magistrate doubted that he had jurisdiction to try the matter in C.M.C.C. No.9860 of 2004 and stayed the proceedings in that case pending the filing of this application.

I have carefully considered the provisions of Section 18 (1) (b) (1) of the Civil Procedure Act. There are no limits or restrictions on a judge's discretion to withdraw any suit or other proceeding pending in any court subordinate to the High Court and thereafter try or dispose of the same. The decision of Ringera J in **Adero & Another –vs- Ulinzi Sacco Society Ltd (Supra)** is distinguishable from the present case. Ringera J was faced with an application to transfer the suit from the High Court to the Cooperative Tribunal and the learned judge determined that the Cooperative Tribunal was not a court subordinate to the High Court as defined under Section 65 of the Constitution.

In **Omwoyo –vs – African Highlands and Produce Company Limited (Supra)**, Ringera J followed the decision of Sir Udoma C. J. in **Kagenyi –vs- Misiramo and Another [1968] E.A. 48** where the Learned Chief Justice of Uganda as he then was held that Section 18 of the Ugandan Civil Procedure Act (*which is identical to our Section 18 of the Civil Procedure Act*) did not confer jurisdiction to the High Court to transfer a suit filed in a court without jurisdiction to a court of competent jurisdiction.

In my humble view the two eminent judges imposed limitations on the jurisdiction of the High Court which limitations are not in Section 18 of the Civil Procedure Act. I dare say that imposing conditions on ourselves on occasions does not advance the cause of justice and may indeed clog speedy determination of disputes between parties who come to our courts for justice. Happily the decisions in **Adero and Another –vs – Ulinzi Sacco Society Limited (Supra)** and **Omwoyo – vs – African Highlands & Produce Company Limited (Supra)** are only of persuasive value. With profound respect to Ringera J I have most regrettably come to the conclusion that lack of jurisdiction may in circumstances such as the ones obtaining in this matter be a good reason or basis of withdrawal of a suit from the subordinate court and transfer to the High Court. Having come to that conclusion, I will allow the application. Nairobi C.M.C.C. No. 9860 of 2004 is hereby withdrawn from that court and transferred to this court for hearing and disposal. Costs of the application shall be in the cause.

Order accordingly.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER, 2006.

F. AZANGALALA

JUDGE

25.10.2006

Read in the presence of: