

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. APPL. NO. 61 OF 2003

JOSPHAT NJERU NJOKA.....APPLICANT

VERSUS

EAAGAD ESTATE LTD.....RESPONDENT

RULING

In the Notice up Motion dated 8th September 2003, the Applicant seeks Orders: “That the Honourable court be pleased to withdraw the PM.CC No.172 of 2002 from the subordinate court and transfer the High Court and transfer the same to the High Court or to any other Subordinate Court competent to try and dispose of the suit”. Grounds in support of that application are that:

- 1.“The Defendant in the defence dated 4th March 2003 has objected the suit on ground of geographical jurisdiction.
2. The anticipated damages payable to the applicant in the event of Success by for exceed the monetary jurisdiction of the subordinate Court.
3. The applicant stand to suffer irreparable loss, expense and Damage should the entire suit be struck out with costs as Intimated by the Defendant for want of jurisdiction.”

If the subordinate court in which the suit intended to be transferred From has no pecuniary and territorial jurisdiction, the Applicant has not made it clear how the subordinate court to which he intends the case be transferred has that jurisdiction. Not only does the Notice of Motion avoid naming the subordinate courts the Applicant is talking about. It also avoid naming the High Court to which the transfer may be made. The supporting affidavit does not make the matter better. Even during submissions, it was not until counsel for the Respondent started mentioning names of courts that the Applicant’s Council was forced to mention a court’s name in her rejoinder.

Otherwise I would have granted the Applicant’s Notice of Motion had it been specific and clear and more importantly, I had it avoided supporting the Respondent’s opposition to the Motion. I do not see why a Resident Magistrate’s court at Thika can be said to have no territorial or geographical Jurisdiction in a case arising, for example, from Embu and a Resident Magistrate’s court at Embu be said to have no such jurisdiction in a case Whose cause of action took place at Thika.

But because the Applicant is conceding that ground and is using it to have case PM.CC No. 172 of 2002 transferred from wherever it is and goes on to add that that court also lacks pecuniary jurisdiction, I do not see how I can grant his application in fact I do not understand why this Notice of Motion had to be there in the first place.

Accordingly, the said Notice of Motion be and is hereby dismissed with costs to the Respondent.

Dated this 6th day of May, 2004

J.M. KHAMONI

JUDGE

Present: Mr. Okwaro for M/s Thoronga