

REPUBLIC OF KENYA

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

Civil Case Misc 145 of 2006

UNICORN INSURANCE BROKERS LIMITED.....PLAINTIFF

VERSUS

EPCO BUILDERS LIMITED.....DEFENDANT

R U L I N G

By a notice of motion dated 28th February 2006, Unicorn Insurance Brokers Limited, the applicant seeks to have Civil Suit Number 9337 of 2004 which it has filed against the Respondent EpcO Builders Limited in the Chief Magistrate's Court at Milimani Commercial Courts transferred to the High Court at Milimani Commercial Courts in Nairobi. It is the Applicant's plea that it wishes to amend the plaint to an amount which will exceed the pecuniary jurisdiction of the Chief Magistrate's Court.

The Respondent opposes the application. Relying on the case of *Kirinyaga County Council vs Kenya Nut Company Limited and Another High Court Miscellaneous Application Number 297 of 2000*, it is submitted on behalf of the Respondent that the application ought not to be allowed as granting it would prejudice the Respondent in its defence. It is maintained that the court cannot grant an order to transfer a suit to itself which in the first instance was defective for want of jurisdiction in the court where the suit was filed. The case of *Omwoyo vs African Highlands and Produce Company Limited [2002] 1 K L R 698* in which Ringera J. held *inter alia* that the High Court cannot exercise its discretion to transfer a suit from one court to another if the suit is filed in the first place in a court which does not have the pecuniary and or territorial jurisdiction to try it, has also been cited.

As per the affidavit of the Applicant's advocate, there was an inadvertent mistake in quoting the figure of the claim which was only noted upon receipt of a request for particulars from the Respondent's advocate and it is for this reason that the Applicant now wishes to amend its plaint to reflect the correct figure. Nevertheless such an amendment will result in the claim exceeding the pecuniary jurisdiction of the Chief Magistrate's Court hence the need to transfer the suit to the High Court. The counsel has not provided any copies of the current plaint or copy of the intended amendments. It would appear to me that this is a deliberate omission. The sum total of the affidavit of the Applicant's advocate is that the suit was filed in the wrong court because of the mistake in quoting the wrong figure. In effect the applicant's claim is much higher than quoted hence the need to amend. What counsel is actually stating is that the Chief Magistrate's Court has no jurisdiction to entertain the Applicant's claim as it lacks pecuniary jurisdiction.

The case of *Kagenyi vs Musiramo and Another [1968] E A 43*; the case of *Omwoyo vs African Highlands and Produce Company Limited [2002] 1 K L R 698*, and the unreported case of *Kirinyaga County Council vs Kenya Nut Company Limited and Another High Court Miscellaneous Application Number 297 of 2000* are all authorities for the proposition that an order for the transfer of a suit from one court to another cannot be made unless the suit has in the first instance been brought to a court which has jurisdiction to try it. In this case it is evident that the applicant's claim exceeded the jurisdiction of the Chief Magistrate's Court right from the beginning. The suit was therefore instituted in the wrong court and this court has no powers to validate it by having it transferred to the right court.

This application must therefore fail and it is accordingly dismissed.

Costs to the Defendant.

Dated, signed and delivered this 22nd day of May 2003.

H. M. OKWENGU

JUDGE