



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 20 OF 2002

**DOMINIC MUREITHI T/A POLUCON SERVICES (K) LTD.
..... PLAINTIFF**

VERSUS

1. JOSEPH WANYAMA & JAMES ODERA t/a

2. KONTROL SERVICES

KONTROL SERVICES (K) LTD DEFENDANTS

RULING

The Notice of Motion is brought under the provisions of order 50 rule 1, Sections 3A, 17 and 18 (1) of the Civil Procedure Act Cap 21 and seeks an order for the Transfer of Chief Magistrate's Civil Suit No. 1361 of 2000 to the High Court for hearing and disposal. It is supported by an affidavit by Mr. Gachiri Kariuki, Counsel for the plaintiff. The Defendants filed Grounds of opposition.

Mr. Gachiri Kariuki submitted that the Chief Magistrate's Court jurisdiction will be ousted by reason of the accruing interest. However Mr. Ouma and Mogaka submitted and rightly so that interest does not form part of the Damages for purposes of determining jurisdiction. An order for interest and costs is separate.

On the other point that the wrong committed by the Defendants is continuing and Damages are likely to be beyond the Chief Magistrate's jurisdiction, no documents were annexed to show that the claim for Damages is likely to exceed the jurisdiction of that court. I have had the opportunity of scrutinizing the pleadings from the Court file in C.M.CC 1361 of 2000 and note that in the 3 prayer, the Plaintiffs prays for the following:

“ An order for payment by Defendants jointly and severally to the plaintiff of amount found to be due to them on taking of such accounts”

From the wording of prayer 2 and 3 it is obvious the amounts are unknown and accounts must first be taken. However now the plaintiff is convinced that the amounts are likely to exceed the jurisdiction of that Court yet no new evidence or material facts have arisen. For an order to transfer suit from an interior suit to a higher Court to succeed, it must be first shown that that court had jurisdiction. In the case of

KAGENYI VS MUSIDAMO & ANOTHER E.A. LR (1968) pg.45 Sir Udo

Udoma C.J. said:

“It is a well established principle of law that the onus is upon the party applying for a case to be transferred from one Court to another for due trial to make out a strong case to the satisfaction of the Court that the application ought to be granted”

I have set out the brief points as submitted by Counsel for the applicant and in my considered view, he has neither shown that the subordinate court has jurisdiction to hear the matter as the stands or advanced a strong case to warrant the granting of the orders. In the circumstances, application fails with costs.

Dated and Delivered this 31st day of May, 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE