

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC CIVIL APPLICATION NO. 1088 OF 2000**

**NATIONAL BANK OF KENYA LTDPLAINTIFF
VERSUS
POLYCAP MBITHI MUE &
AMOS MATHIASDEFENDANT**

RULING

This application for an order that Resident Magistrate Civil Case 597/94 be withdrawn from RMS Court and be transferred to the High Court for trial is opposed on the main ground that the suit was filed in a court which had no jurisdiction to try the suit. In the suit, plaintiff seeks judgment for Kshs 391,468/= with interest at the rate of 40% p.a from 30.9.94 until payment in full. The plaint was filed on 28.11.94.

Respondents counsel contends that because of the claim of interest at 40% p.a. the Lower Court had no jurisdiction to try the suit.

It is apparent that at the time of the suit was filed plaintiff was claiming interest for only 2 months. Interest awarded in court is simple not compound interest. So if the suit was tried soon after it was filed the interest even if awarded at 40% p.a could not have raised the claim to over shs 500,000/= It is conceded that Lower court has jurisdiction to try a claim where the value of the subject matter is not over shs 500,000/= the principal sum claimed was less than shs 500,000/= and as I have said had the suit been tried promptly, the principal amount and interest, even if awarded at 40% p.a could not have exceeded the shs 500,000/= ceiling.

In any case it is speculation to say that court would award interest at 40% p.a It is the delay in the hearing of the suit which has enhanced the claim for interest if allowed at 40% p.m.

In the circumstances I am satisfied that the suit was filed in the court with jurisdiction and that the application for withdrawal and transfer of the suit to the High court is justified.

Consequently, I allow the application with no orders at to costs and grant orders in terms of prayer 1 of the application. The suit is transferred to High court Commercial Court Milimani

E. M. Githinji

Judge

6.11.2001

Mr. Mbaabu holding brief for Mr. Kangethe for applicant present

Mr. Ogoti for Respondent present