



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. CIVIL SUIT NO.227OF 2000

NATIONAL WATER CONSERVATION & PIPELINE CORPORATION..... APPLICANT

- versus -

OCEAN VIEW BEACH HOTEL RESPONDENT

RULING

Under S.18 of Civil Procedure Rules this Court can on application by any party to proceedings transfer or withdraw a case from lower court to itself. Here there is an application to withdraw the case from Subordinate Court to this Court on grounds that Pecuniary Jurisdiction of the lower Court is exceeded.

Mr. Kioko has opposed this on several grounds but I do not think those grounds are pertinent. The question of advocate swearing an affidavit on behalf of his client is a bad practice because it exposes an advocate to cross examination, it interferes with his exemptions and privileges under Evidence Act, but it does not render such application void.

Other grounds mentioned by Mt. Kioko are not such that they can override the question of Jurisdiction. If the Lower Court would lack jurisdiction when a counter-claim is pleaded then High Court is the appropriate forum. Counter-claim is a defence as well as a distinct suit.

I therefore grant the application and order the case be withdrawn from the subordinate court and be brought to the High Court. Cost to be in the cause.

Dated this 16th Day of November, 2000.

A.I. HAYANGA

JUDGE