



**Climax Coaches Limited v Mobi Key and Bus Limited & another; Equity Bank Kenya Limited (Interested Party) (Miscellaneous Application E592 of 2022) [2025] KEHC 5667 (KLR) (Commercial and Tax) (7 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5667 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E592 OF 2022**

**NW SIFUNA, J**

**MAY 7, 2025**

**BETWEEN**

**CLIMAX COACHES LIMITED ..... APPLICANT**

**AND**

**MOBI KEY AND BUS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**KENYA VEHICLE MANUFACTURERS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**EQUITY BANK KENYA LIMITED ..... INTERESTED PARTY**

**RULING**

1. This ruling is on the Applicant's Application dated 27<sup>th</sup> July 2022. By the Application, the Applicant who is the Plaintiff in Milimani CMCC No. E1636 of 2021, is seeking to transfer the suit from the Magistrate's Court to this Court.
2. The Application which is supported by a Supporting Affidavit sworn on even date, is based on the grounds that after the Plaintiff was amended, the value of the subject matter of the said suit increased from Ksh 4.6 million initially (which was within the subordinate court's pecuniary jurisdiction) to Ksh 42 million subsequently (which is beyond the pecuniary limits of the jurisdiction of the subordinate court).
3. The Application has been opposed by the Respondent/ Defendant, who has argued that the suit cannot be transferred, as that it was filed in a court that lacked the pecuniary jurisdiction.
4. The Application was canvassed through oral arguments by the parties' advocates.



## **Analysis and Determination**

5. The singular issue for determination in this Application, is whether this suit should be transferred from the subordinate court where it is currently, to this Court for hearing and determination.
6. In making and determining this Application, I have considered the Application and its Supporting Affidavit, the response to it, as well as the parties' rival submissions at the hearing of the Application. I have also perused the original Plaintiff that was filed in the subordinate court; and also the subsequent amendment that led to the value of the subject matter of the suit ballooning from the initial Ksh 4.6 million to the subsequent Ksh 42 million currently.
7. Opposing the transfer, the Respondent has cited several legal authorities that state that a suit filed in a court that lacks jurisdiction is not transferable.
8. The power to transfer suits instituted in the subordinate courts is provided under Section 18 of the *Civil Procedure Act* (Cap 21 Laws of Kenya). On the legal embargo on the transfer of a suit on the ground of the suit having been filed in a court that did not have jurisdiction, I hold that the point in time of reference, is at the inception of the suit i.e at the time when the Plaintiff was filed.
9. Besides this is applicable in cases of a total lack of jurisdiction especially lack of subject matter jurisdiction, rather than in circumstances where the amount of the claim was within the pecuniary limits of the court in which the suit was filed, but later upon amendment of the Plaintiff, increased to an amount beyond that limit.
10. The difference in the amount can be addressed by payment of the deficiency in court fees (Section 96 of the *Civil Procedure Act*, Cap 21 Laws of Kenya), rather than by blockading the transfer of the suit to a court having pecuniary jurisdiction on the subsequent amount.
11. At the time when this suit was filed in the subordinate court the amount of Ksh 4.6 million stated in the Plaintiff was within the pecuniary jurisdiction of the subordinate court. Hence the suit was filed in a court having jurisdiction. It is only subsequently when upon amendment of the claim with the incremental effect of interest and continuing loss of user, that initial amount of Ksh 4.6 million was by the said amendment increased to the current Ksh 42 million.
12. The amount stated in the Plaintiff that instituted this suit having been within the pecuniary jurisdiction of the subordinate court, this suit was therefore filed in a court with the requisite jurisdiction. A court of competent pecuniary jurisdiction. I further hold that the legal embargo on transfer of suit does not therefore apply in these circumstances.
13. For those reasons, I allow the Application and order that Milimani CMCC No. E1636 OF 2021 currently pending in the subordinate court, is hereby transferred to the High Court Commercial and Tax Division for hearing and determination. Each party shall bear its own costs of the Application.

**DATED AND DELIVERED AT NAIROBI ON THIS 7<sup>TH</sup> DAY OF MAY 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

