



**Equity Bank Kenya Ltd v Mutambu (Miscellaneous Civil Application E059 of 2024)
[2024] KEHC 5385 (KLR) (Commercial and Tax) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5385 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E059 OF 2024**

FG MUGAMBI, J

MAY 17, 2024

BETWEEN

EQUITY BANK KENYA LTD PLAINTIFF

AND

JOE MUSYIMI MUTAMBU RESPONDENT

RULING

1. This ruling determines the application dated 27th January 2024 which seeks the transfer of CMCC 8888 of 2018 from the Chief Magistrates Court for hearing and determination before this Court. The application is supported by the affidavit sworn by Samuel N. Wamaitha on 24th January 2024. It is unopposed despite the respondent having been served as evidenced by the affidavit of service sworn on 14th March 2024 by one George Gikamu Njora.
2. Be that as it may, it is the responsibility of this Court to test the veracity of the averments before it and interrogate the merits of the application before coming to a determination.

Analysis

3. Section 18(1)(b) of the *Civil Procedure Rules* is relevant to the application. It provides as follows:

“On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

(a)



(b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—try or dispose of the same. ...”

4. It is the applicant’s case that the dispute before the court relates to a loan facility advanced to the respondent by the applicant. The suit herein was filed on 4th October 2018 claiming the sum of Kshs.16,888,588.72 from the respondent. This amount has since increased to Kshs.22,620,269/= as a result of accrued interest. The applicant notes that this amount is above the pecuniary jurisdiction of the Chief Magistrates Court and therefore seeks to have the matter withdrawn for hearing and determination before this Court.
5. While it is true that the Chief Magistrate’s Court lacks jurisdiction to adjudicate over a matter in which the subject matter exceeds Kshs. 20,000,000/=, I note that the averments by the applicant are totally unsupported. The Court has not had sight of the plaint that instituted the claim in the lower court or any proof of the value of the subject matter of the dispute. As such, it would be remiss of this Court to grant the order sought without such evidence.

Disposition

6. The application dated 27th January 2024 is therefore struck out for want of evidence, with no orders as to costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 17TH DAY OF MAY 2024.

F. MUGAMBI

JUDGE

