



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KIAMBU**

**MISCELLANEOUS CIVIL CASE NO 268 OF 2017**

**DANIEL GICHINI KARIUKI.....APPLICANT**

**VERSUS**

**KARURA UMOJA INVESTMENT CO. LTD.....RESPONDENT**

**R U L I N G**

1. The Motion filed on 16<sup>th</sup> November, 2017 by **Daniel Gichini Kariuki** is seeking the transfer of **Thika CM's Civil Case No. 1189 of 2015** filed by the Applicant against **Karura Umoja Investment Co. Ltd.** On grounds that the dispute therein is between a company and a shareholder; that only the High Court has the necessary jurisdiction. For undisclosed reasons the supporting affidavit which contains contentious matters, is sworn by the Applicant's advocate and not the Applicant himself. Annexed to the affidavit is the plaint in respect of the suit in the court below.

2. The Replying affidavit sworn by the secretary of the Respondent, **Peter Kihoto Kiiru** disputes the Applicant's claim to shares in the company and takes issue with the prayer for transfer of a suit filed in a court without jurisdiction, being a *nullity ab initio*. That the application before the court is a concession of this fact by the Applicant.

3. The application was disposed of by way of written submissions, the Applicant reiterating the contents of the grounds and supporting affidavit. Citing Section 3 of the Companies Act, the Applicant asserts that the lower court has no jurisdiction over the dispute between the parties. The Respondents emphasize this point in their submissions, stating that the suit in the lower court being a nullity is incapable of transfer. The Respondents relied on two authorities; **Sarah Chelagat Samoei v Musa Kipkering Kosgei & Another [2013] eKLR** and **Charles Wainaina Njehia v Barclays Bank of Kenya [2006] eKLR**.

4. The court has considered all the matters canvassed in respect of the Applicant's Motion. The Applicant concedes filing his suit in a court without jurisdiction, and the fact that his instant Motion was filed upon being confronted with a preliminary objection in the lower court on the question of jurisdiction. From the averments in the annexed copy of the plaint, and the parties respective affidavits, the dispute relates to the shareholding claimed by the Applicant, and disputed by the Respondent. Thus, the applicable law is the Companies' Act.

5. The High Court and not the subordinate courts, is empowered to entertain disputes arising under the act, and Section 18 of the Civil Procedure Rules cannot override the provisions of the Companies Act in that regard. In the circumstances, it is self-evident that the Applicant filed his suit in a court which had no jurisdiction. The suit in the lower court is effectively a nullity, incapable of being transferred. The Applicant's Motion must fail therefore, and is dismissed with costs.

**DELIVERED AND SIGNED AT KIAMBU THIS 2<sup>ND</sup> DAY OF NOVEMBER, 2018.**

**C. MEOLI**

**JUDGE**

**In the Presence of:**

For the Applicant – Mr. Kinyua for Mr. Ngige

For the Respondent – No appearance

Court Clerk – Kevin