

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NUMBER 397 OF 2014

MOMBASA CEMENT LIMITED. PLAINTIFF/APPLICANT

VERSUS

MONICA HARDWARE LIMITED. DEFENDANT/RESPONDENT

RULING

The application before the court is the Notice of Motion undated but filed in court on 11th December, 2014. It seeks mainly the transfer of the suit to unnamed Chief Magistrate Court.

The application is supported by an affidavit stating that the suit was inadvertently filed in this court and should under the relevant Section 11 and 18 of the Civil Procedure Act, Cap 21 be transferred to a lower court with pecuniary jurisdiction.

During the hearing of this application other issues concerning the validity of the suit arose and the parties tried to canvass them.

In the court's view, however, the only issue that the application placed before this court for adjudication was the issue of whether the suit should or should not be transferred as sought.

I have carefully examined the application. I notice that it is not dated. Secondly, although the applicant seeks a transfer to a Subordinate Court with jurisdiction, it has not specified in the application, to which specific lower court the suit should be transferred. In the circumstances, and taking into account that a suit should be filed in court in respect of which certain conditions are fulfilled, this application for transfer is not only incomplete and invalid, but also illogical. For example a suit should be filed in a court in whose geographical area parties reside or where the relevant contract was entered etc. To that end, if this court transferred the suit to Nakuru, the transfer would baffle the parties who may not be residing there.

Hence, it was necessary, indeed imperative for the Applicant to state the particular court to which the suit ought to be transferred to.

The result is that the failure to date the application together with the failure to name the court, to which the suit should be transferred, renders the application invalid and incompetent and thus fit only for striking out, which I hereby do with costs. Orders accordingly.

Dated and delivered at Nairobi this 14th day of July, 2015.

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D A ONYANCHA

JUDGE

