



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

MISCELLANEOUS CIVIL APPLICATION 81 OF 2007

JIM MATIA BANDI APPLICANT

VERSUS

HERMAN ONZERE 1ST RESPONDENT

ISAAC INJIRA 2ND RESPONDENT

CHRISTOPHER M'MBOGO 3RD RESPONDENT

JOHNSTONE JOMO OMBEVA 4TH RESPONDENT

GABRIEL AMBANI AMAIZA 5TH RESPONDENT

JAMIN IGADWA 6TH RESPONDENT

NIXON LUSENO 7TH RESPONDENT

RULING

This is an application under the provisions of Section 18 of the Civil Procedure Act, Cap. 21 for an Order that the Eldoret CMCC No. 239 of 2006 be transferred to the Eldoret High Court for hearing and determination.

The main ground for the application is that the amount which might ultimately be awarded in the Judgment will be beyond the pecuniary jurisdiction of the Lower Court. The Applicant says that his claim in the sum of Ksh. 10 Million in damages for defamation.

The application is opposed by the Defendants.

I have carefully perused the Amended Plaintiff dated 20th December, 2006. It is my view that this Court cannot speculate or predict the likely outcome in the suit before the Chief Magistrate's Court. To allow the transfer of the suit on the allegation that the Plaintiff is likely to be awarded Sh. 10 Million in damages would be improper, speculative and an interference with the due process of the Court.

If the Applicant knew of the level of damages he intended to seek, he ought have filed his suit in the appropriate jurisdiction.

The application is not merited and is an abuse of the Court process. This is not a suitable case for transfer of a suit from the Subordinate Court to the High Court.

The application is dismissed with costs to the 1st, 2nd, 3rd, 4th, 5th and 6th Defendants.

DATED AND DELIVERED AT ELDORET ON THIS 2ND JUNE, 2009.

M. K. IBRAHIM

JUDGE

In the presence of:

Applicants

Six (6) Defendants

Mr. Kitur holding brief for Mr. Shitsama for the 4th, 5th and 6th Respondents