



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISCELLANEOUS CIVIL APPLICATION 102 OF 2009**

**MUNUNGA KIANDA FARMERS CO. LTD.....APPLICANT**

**VERSUS**

**SOGEA SATOM KENYA BRANCH.....RESPONDENT**

**RULING**

This court has power under **section 18(1)** of the **Civil Procedure Act**, to transfer any suit pending before a subordinate court to another or to withdraw such suit and either transfer the same to another subordinate court or to itself for hearing and final disposal. An applicant seeking the invocation of such power must however satisfy the High Court that there is sufficient cause for the court to exercise its power.

The applicants in this case claim that the pecuniary jurisdiction of the Naivasha Court has changed with the elevation of the Chief Magistrate previously attached to that court to the position of a judge of the High Court. This fact was not stated in the application but only mentioned by the advocate when arguing the application. The applicants state that it came to them by surprise on 31<sup>st</sup> March 2009 that the pecuniary jurisdiction of the court was Shs 1,000,000/- only.

The present application is premised on the grounds that damages sought to be recovered as special damages have escalated to Kshs 8,500,000/=. The original plaint has not been annexed to the application for the court to establish what the appellants' claim was as filed. Assuming that the draft amended plaint, annexed to the present application, reflects what was previously claimed.

I note that no special damages were claimed before the lower court. The purported assessment of damage by surveyors and a report of a land valuer, annexed to the supporting affidavit, do not help the applicants' case since special damages must be pleaded and then proved. That the same were obtained after the suit had already been set down for hearing without any special damages being pleaded, goes to show either; that the suit was filed prematurely, or the applicant's claim is still unascertainable. I find the figure of Shs. 8.5 million merely speculative since the plaint does not set out particulars of special damages as ought to be done.

There is no concrete evidence that currently the Naivasha Court has no monetary jurisdiction to entertain the suit in the absence of a letter from the Registrar of the High Court to confirm the current status.

For the above reasons I am not persuaded of the merits of the application before me and I hereby dismiss the application with costs.

I need not make any finding as regards the provision of security and amendment of the plaint in the circumstances.

Orders accordingly.

**Dated, signed and delivered at Nakuru this 9<sup>th</sup> day of July 2009**

**M. G. MUGO**

**JUDGE**