



**Gitonga v Amica Savings and Credit Limited (Miscellaneous Civil Case
E026 of 2023) [2024] KEHC 7774 (KLR) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7774 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
MISCELLANEOUS CIVIL CASE E026 OF 2023
CW GITHUA, J
JUNE 28, 2024**

BETWEEN

JOHN GICHOYA GITONGA APPLICANT

AND

AMICA SAVINGS AND CREDIT LIMITED RESPONDENT

RULING

1. The Applicant, John Gichoya Gitonga, approached this court through a Notice of Motion dated 20th of April 2023 seeking orders directing the transfer of a suit registered as MCL & E No.4 of 2022, from the Kandara Principal Magistrate's to the Chief Magistrate's court or the High Court at Murang'a for hearing and final determination.
2. The application is anchored on the grounds stated on its face and the depositions made in the supporting affidavit sworn by the applicant on 20th of April, 2023. In brief, the applicant contends that the suit in the lower court was filed on the understanding that the loan amount due to the respondent was Kshs. 7,000,000, which amount was within the pecuniary jurisdiction of the Principal Magistrate's court; that the respondent filed his defence in the suit without contesting the jurisdiction of the trial court.
3. The applicant further stated that it is when the matter came up for full hearing on 5th of April 2023 that the respondents witness, while tendering evidence in chief stated that the outstanding loan amount at the date of the hearing was Kshs. 18,000,000 which prompted the trial court to advise the parties to have the matter transferred to the Chief Magistrate's court at Murang'a or the High Court as these were the courts possessed of pecuniary jurisdiction to handle claims of that magnitude.
4. The respondent did not file a response to the application but instead filed a Notice of Preliminary Objection dated 16th of May, 2023. In the Preliminary Objection, the respondent claimed that the



- current application was fatally defective as it offended the provisions of Section 76 of the *Co-operative Societies Act* and ought to be struck out with costs to the Respondent.
5. In response to the Notice of Preliminary objection, the applicant filed a replying affidavit dated 30th January 2024 in which he deposed that he was merely an account holder and not a shareholder or a member of the respondent and as such, Section 76 of the *Co-operatives Societies Act* was not applicable to him. Further, he averred that the dispute between the parties related to a chargor and chargee and had nothing to do with shares, membership, operations or management of the respondent.
 6. On 7th February 2024, I gave directions that the Preliminary objection be argued as part of the respondent's opposition to the application. The application was prosecuted before me by way of oral submissions on 29th of April, 2024. During the hearing, learned counsel, Mr. Muthomi represented the applicant while learned counsel Mr. Waweru appeared for the respondent.
 7. In his submissions, Mr. Muthomi re-iterated and expounded on the depositions made in the applicants supporting and replying affidavits and emphasized that the application was premised on grounds that the lower court no longer had pecuniary jurisdiction to determine the suit in view of the amount the respondent claims to be the loan's outstanding balance.
 8. On his part, Mr. Waweru submitted that the application contravened Section 76 of the *Co-operative Societies Act* as the dispute at hand involved a debt owed to the respondent by the applicant; that the dispute ought to have been heard by the Co-operative Tribunal as required by the doctrine of exhaustion given that the applicant was a member of the respondent.
 9. In response, Mr. Muthomi denied the respondent's claim arguing that no evidence in the form of a membership card or a register had been tendered to prove that the applicant was a member of the respondent. He maintained that the relationship between the parties was purely that of a chargor and chargee.
 10. After considering the application, the affidavits on record, the respondents preliminary objection as well as the parties rival submissions, I find that the preliminary objection challenges the competence of the current application on grounds that it offends Section 76 of the *Co-operative Societies Act*. It does not challenge the competence of the suit pending in the lower court on account of lack of jurisdiction.
 11. In my considered view, the Preliminary objection is misconceived for the reason that the application before this court seeks transfer of a suit which is pending before the Kandara Principal Magistrate's Court from that court to the Murang'a Chief Magistrates Court for hearing and disposal on grounds that the Kandara magistrate's court lacks pecuniary jurisdiction to determine the suit. The application is filed under Section 18 of the *Civil Procedure Act* which empowers this court to transfer suits from one subordinate court to another or from the lower court to itself for hearing and determination.
 12. It is not disputed that there is a suit between the parties pending determination in the lower court and therefore, the applicant properly invoked the supervisory jurisdiction of this court to have the suit transferred to a different subordinate court which in his view was competent to try it. In my opinion, the application has nothing to do with Section 76 of the *Co-operative Societies Act*. It is my finding that the application is competent and is properly before this court. If the respondent wanted to challenge the competence of the suit on account of the trial court's lack of jurisdiction to try the same, it ought to have filed the Preliminary objection before the trial court at the earliest opportunity and not before this court.
 13. Turning now to the merits of the application, the applicant's case is that he filed the application on advice by the learned trial magistrate following the respondent's witness claim that the balance of the loan stood at Kshs. 18,000,000 and not Kshs. 7,000,000 which according to him was the amount in



contention. The applicant did not claim or demonstrate that subsequently, he amended his plaint to reflect the new amount claimed by the respondent or that the respondent had counter claimed for the said amount.

14. It is trite that parties are bound by their pleadings and as matters now stand, going by the plaint annexed to the applicants supporting affidavit, the value of the subject matter in the suit pending before the lower court is apparently Kshs. 7,000,000 which falls within the lower court's pecuniary jurisdiction. In the absence of evidence demonstrating that the value of the subject matter of the suit exceeds the lower court's pecuniary jurisdiction as alleged by the applicant, I find no legal basis upon which to allow the application as prayed.
15. In view of the foregoing, I am satisfied that the instant application lacks merit and it is hereby dismissed with costs to the respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 28TH DAY OF JUNE 2024.

C. W. GITHUA

JUDGE

In the presence of :

Miss Muthomi for the Applicant

Ms Njoroge for the Respondent

Ms Susan Waiganjo Court Assistant

