



**Kwayera t/a Tele News Africa and Atlantic Region v Maosa Thomas  
Gichana Nyakambi p/a Maosa & Co. Advocates (Civil Appeal  
E063 of 2024) [2024] KEHC 8008 (KLR) (Civ) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8008 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E063 OF 2024**

**AM MUTETI, J**

**JUNE 26, 2024**

**BETWEEN**

**SIMPSON SENDA KWAYERA T/A TELE NEWS AFRICA AND ATLANTIC  
REGION ..... APPELLANT**

**AND**

**MAOSA THOMAS GICHANA NYAKAMBI P/A MAOSA & CO.  
ADVOCATES ..... RESPONDENT**

**RULING**

Ruling on Preliminary Objection Dated 24th April 2024

1. The Respondent in this matter vide his Defendant's written statement of Grounds of Opposition and Preliminary Objection dated the 24<sup>th</sup> April 2024 protests against the hearing of the originating summons dated 21<sup>st</sup> day of March 2024 by any Judge of the Civil Division.
2. In the respondents view this matter involves public money and should therefore be moved to the Anti-corruption and Economic Crimes Division for determination. The civil Division of the High Court can hear a matter involving public money otherwise all personal injury claims and such other suits would have to be moved to the Anti-corruption & Economic Crimes Division if the involve the Attorney General or any public entity as a defendant. That cannot have been the spirit behind the creation of that division.
3. The Respondent further contends that this matter is a complaint relating to an advocate on matters that touch on the discharge of his professional duty as an Advocate. It is not at this stage that one can determine this issue for it is not a matter of Law but a hotly contested issue of facts from the pleadings in this file.



4. It is on account of these two preliminary issues that counsel for the Respondent seeks to have this court order the immediate transfer of this matter to the Anti-corruption & Economic Crimes Division of the High Court.
5. When the matter came up before me on 24/6/2024 and considering protestation by the Respondent who appeared in person about this court's jurisdiction, I invited parties to address me on the same and reserved the matter for a Ruling as to whether the issues that are raised in the originating summons are matters that this court can hear and determine. I have determined that indeed this court is competent to determine the same. Jurisdiction is everything. Without it the court should down its tools. See *Motor Vessel Lillians(s) v Caltex Oil (Kenya) Ltd* [1989] eKLR.
6. It is on this basis that this court decided to determine this preliminary issue first.
7. The Civil Division of the High Court just like any other Division of the High Court enjoys unlimited original jurisdiction over any matter by dint of the provisions of Article 165(3) (a) of the *Constitution* of Kenya. It is a jurisdiction that is only limited to the extent of the matters specifically excluded by Article 162 (5) of the *Constitution* and reserved for the exclusive jurisdiction of courts of equal status to wit the Land and Environment Court as well as the Employment and Labour Relations Court.
8. The jurisdiction of the High Court therefore is not open to the election by a party out of his own preference or other extraneous consideration. It is constitutionally entrenched. To be successful in challenging the jurisdiction of the High court, the party seeking such an order must demonstrate beyond peradventure the constitutional and or statutory basis for asserting so. It must be understood that the various divisions of the High Court are Administrative outfits fashioned by the judiciary to promote efficiency and expediency in the hearing and determination of matters. The divisions are not constitutionally underpinned. The existence of the divisions cannot be a basis to attempt to oust the jurisdiction of this court outside the parameters set by the *Constitution*.
9. The Respondent has challenged the hearing of this matter before the Civil Division Primarily on the basis that according to him the matter relates to money laundering and thus, in his view, fit for determination by the Anti-Corruption and Economic Crimes Division. I do not agree with that position. The High Court in exercise of its civil jurisdiction has the constitutional authority to determine any civil dispute. Subject to the constitutional limitation under Article 162 (2) of the *Constitution*.
10. This court has examined the originating Notice of Motion and noted that what the Applicant seeks in the originating summons is to have the funds that he alleges were received by the Respondent as his duly appointed counsel and Agent released to him.
11. The originating motion largely concerns the payment of money due and owing to the Applicant.
12. The dispute is one which this court or any other judge of the Civil Division can hear and determine.
13. Counsel for the Applicant submitted that all these protestations by the Respondent through a Preliminary objection are calculated to delay the expeditious hearing and disposal of this matter. In his view, the originating summons is before the proper court and should be heard and determined on merit.
14. This court answering to the aspiration of Kenyans as expressed in the language of Article 159 of the *Constitution* finds that the objection to this court's jurisdiction to hear the matter is legally untenable and without merit. the *Constitution* commands us to dispense justice justly and expeditiously. I find and hold that to decline jurisdiction to hear this matter in the Civil Division of the High Court would be to countenance delay. I decline to do so and order that the matter shall be heard before this Division.



The preliminary objection on jurisdiction on the basis of the matter being one touching on money laundering therefore fails.

15. The remainder of the Preliminary Objection shall be subsumed into the main hearing of the originating motion as part of the response to the originating summons.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26<sup>TH</sup> DAY OF JUNE 2024.**

**HON. A.M MUTETI**

**JUDGE**

In the presence of:

Kiptoo: Court Assistant

Mr. Maosa for the Respondent

Busiega for the Applicant

Plaintiff present in person

