



REPUBLIC OF KENYA



**Kwale International Sugar Company Limited v Greenlife Crop
Protection Africa Ltd (Miscellaneous Application E124 of 2023)
[2023] KEHC 27558 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 27558 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E124 OF 2023
F WANGARI, J
SEPTEMBER 29, 2023**

BETWEEN

KWALE INTERNATIONAL SUGAR COMPANY LIMITED APPLICANT

AND

GREENLIFE CROP PROTECTION AFRICA LTD RESPONDENT

RULING

1. The ruling is in respect of the Notice of Motion dated 15/5/2023. In summary, the application seeks the following orders;
 - a. That Mombasa CMCC No. E294 of 2023, Greenlife Crop Protection Africa Ltd v Kwale International Sugar Co. Ltd, be transferred from Mombasa Chief Magistrate's Court, to Kwale Chief Magistrate's Court.
 - b. Costs be provided for.
2. The Applicant deponed that the cause of action arose in Kwale County and that the 'Chief Magistrate's Court' has jurisdiction to hear and determine the matter. The claim is for Ksh. 13,055,000 and the court in Kwale had the pecuniary jurisdiction to entertain the matter.
3. The Respondent on the other hand in their Replying Affidavit dated 17/5/2023 denied that the Kwale Court had pecuniary jurisdiction. It was deponed that the highest court at Kwale Magistrate's Court was presided over by a Principal Magistrate whose pecuniary jurisdiction is Ksh. 10,000, hence no jurisdiction to handle the matter.
4. Directions were given that the application be disposed of by way of written submissions. Both parties by filing the documents in the e-platform.



Analysis and Determination

5. I have considered the application, the supporting affidavit, the annexures and the rival submissions thereto. The issues for determination are;
- a. Whether the application dated 15/5/2023 has merits
 - b. What is the order as to costs?
6. Section 18 of the *Civil Procedure Act* confers the High Court with the jurisdiction to transfer suits from one court to another, and it provides as follows;

- “(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—
- a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
 - i try or dispose of the same; or
 - ii transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - iii retransfer the same for trial or disposal to the court from which it was withdrawn.
- (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”

7. In the case of *Oceanic Towers Limited v Hussein Builders Limited* [2021] eKLR, Njoki Mwangi J, held;

“In the case of *David Kabungu v Zikarenga & 4 others*, Kampala HCCS No. 36 of 1995, the Court had the following to say on the circumstances under which the order to transfer suits may be granted-

“Section 18(1) of the *Civil Procedure Act* gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. The burden lies on the Applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice or the suit has been filed in a particular court for the purposes of working injustice. What the court has to consider is whether the Applicant has made a case to justify it in closing doors of the court on which the suit is



brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction It is a well established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are balance of convenience, questions of expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication must be refused. Want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court from which transfer is sought has no jurisdiction to try the case, transfer could be refused....."

8. From the above, the burden lies on the Applicant to make out a strong case for the transfer. The reason given for the transfer is that the court in Kwale has pecuniary jurisdiction since it was a Chief Magistrate's court. The rival submissions by the Respondent was that the Kwale Magistrate's Court lacked jurisdiction as it was presided over by a Principal Magistrate who lacked pecuniary jurisdiction to deal with the matter.
9. The pecuniary jurisdiction of the Magistrates' Courts is provided for under Section 7(1) of the [Magistrates' Courts' Act](#), and which provides as follows;

“ A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed —

 - (a) twenty million shillings, where the court is presided over by a chief magistrate;
 - (b) fifteen million shillings, where the court is presided over by a senior principal magistrate;
 - (c) ten million shillings, where the court is presided over by a principal magistrate;
 - (d) seven million shillings, where the court is presided over by a senior resident magistrate; or
 - (e) five million shillings, where the court is presided over by a resident magistrate.
8. It is a fact that is in public knowledge, that the Head of Station and the Presiding Magistrate at Kwale Law Court is Hon. L.T. Lewa, Principal Magistrate. Even after the Respondents opposed the application by stating this fact, the Applicant did not bother to verify the position, but instead went ahead with the matter, hence this ruling.
9. The Honourable Magistrate being a Principal has a pecuniary jurisdiction which is limited to Ksh. 10,000, a position which was rightly stated by the Respondent. The suit which claim is an amount of Ksh. 13, 055,000 is therefore incapable of being heard in Kwale Magistrate's Court. The Applicant has therefore failed to demonstrate out a strong case for transfer the of suit.
10. On the issue of costs, it is settled that the same follows the event. That is the import of Section 27 of the [Civil Procedure Act](#). The court reserves its discretion on whether to award costs to either party. This was well enunciated by the Supreme Court in the case of [Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate of & 4 others](#) [2013] eKLR. In the present circumstances, the Applicant chose to proceed with the application despite the facts being placed on record by the Respondent. I find that costs must be awarded to the Respondent.



11. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
- a. The Notice of Motion dated 15/5/2023 has no merit and is hereby dismissed.
 - b. The parties to take a mention date before the trial court in Mombasa CMCC No. E294 of 2023 for directions on the matter.
 - c. Costs of the application awarded to the Respondent.

DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 29TH DAY OF SEPTEMBER, 2023.

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F. WANGARI

JUDGE

In the presence of:

Njiru Advocate for the Applicant

Litoro Advocate for the Respondent

Barile, Court Assistant

