



**Mwiti v Colkland Group Limited & another (Miscellaneous Application E633 of 2020)
[2022] KEHC 14 (KLR) (Commercial and Tax) (28 January 2022) (Ruling)**

Neutral citation: [2022] KEHC 14 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E633 OF 2020**

**A MABEYA, J
JANUARY 28, 2022**

BETWEEN

CHRISTINE KAJUJU MWITI APPLICANT

AND

COLKLAND GROUP LIMITED 1ST RESPONDENT

STALLION TRADERS LIMITED 2ND RESPONDENT

RULING

1. Before Court is an application dated 24/2/2020 that seeks to transfer CMCC No. 4354 of 2015 Colkland Group Limited vs. Stallion Traders Limited and Christine Kajuju Mwiti from the Chief Magistrates Court, Milimani to the Chief Magistrates Court, Nakuru for hearing and final determination.
2. It is premised on the grounds that the 1st respondent filed the subject suit in the wrong court causing undue hardship on the defendants. That the cause of action arose in Nakuru County and that both the 1st and 2nd defendant in that suit operate business within Nakuru County.
3. The 1st respondent opposed the application vide the replying affidavit of Joyce Nguma sworn on 19/7/2021. It was contended that while the 2nd respondent's business is in Nakuru, the 1st respondent's business operations are located in Nairobi. That the business transactions forming the subject matter were conducted in both Nakuru and Nairobi. That section 15 of the *Civil Procedure Act* provides for the filing of suits where the defendant resides or where the cause of action arose.
4. The 1st respondent contended that the business transaction was commenced in Nairobi, the contract was implemented in Nairobi and the goods delivered to the 2nd respondent's address in Nakuru while



payment was remitted to its accounts in Nairobi. That in the premises, the suit could be filed either in Nairobi or Nakuru and thus it was duly lodged in Nairobi.

5. The second respondent supported the applicant's plea to have the suit transferred to Nakuru through its submissions dated 23/9/2021.

6. The Court has considered the parties' representations. Section 15 of the Civil Procedure Act provides: -

“Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction -

(a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or

(b) any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises. Explanation. (1)—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation. (2)—A corporation shall be deemed to carry on business at its sole or principal office in Kenya, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Explanation. (3)—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely— (i) the place where the contract was made; (ii) the place where the contract was to be performed or the performance thereof completed; (iii) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable”.

7. In the present case, the 1st respondent delivered a consignment of coffee tables from Nairobi to the 2nd respondent in Nakuru through the applicant.

8. The applicant and 2nd respondent is undeniably based in Nakuru. On the other hand, the 1st respondent operates in Nairobi. Based on illustration (a) under section 15 of the Civil Procedure Act, the 1st respondent as the plaintiff in the lower court can institute a case against the 2nd respondent and applicant either in Nairobi where the cause of action arose or in Nakuru. The cause of action arose in Nairobi as the goods were transported from the 1st respondent's premises in Nairobi to the 2nd respondent's in Nakuru.

9. Therefore it was perfectly in order for the suit to be instituted in Nairobi as the cause of action arose therein.

10. The court has taken notice that the suit in the Magistrate's Court was instituted in 2015 by the 1st respondent and that the applicant and 2nd respondent participated as defendants in the suit by lodging defences to the claim against them.



11. It would therefore be a waste of precious judicial time if the suit is transferred to Nakuru at this stage. It seems like an afterthought on the part of the applicant to lodge the present application for transfer years after the suit was instituted in Nairobi.
12. We now live in the era of online court proceedings and hearings, the applicant and 2nd respondent will be able to participate fully from the comfort of their homes in Nakuru. Further, no prejudice has been illustrated by the applicant.
13. For the foregoing reasons, the Court finds that the application lacks merit and dismisses the same. Each party to bear own costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF JANUARY, 2022

A. MABEYA, FCI Arb

JUDGE

