



**Chacha v Mwinzi (Miscellaneous Civil Application 73 of 2022)
[2022] KEHC 11085 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11085 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
MISCELLANEOUS CIVIL APPLICATION 73 OF 2022**

GV ODUNGA, J

JULY 28, 2022

BETWEEN

DAVID OKEMWA CHACHA APPLICANT

AND

BENARD NZIOKI MWINZI RESPONDENT

RULING

1. By a Notice of Motion dated 25th May, 2022, the applicant herein seeks an order that Machakos Small Claims Civil Case No. E167 of 2022 be transferred to Nairobi Small Claims Court for hearing and determination.
2. The grounds upon which the application is based are that the Respondent herein together with his wife defrauded the Applicant of a certain sums of money for sale of some shares and a parcel of land at Katani, Mavoko Municipality. According to the applicant all the said transactions were done in Nairobi where the Respondent's wife had an office.
3. Upon learning that he had been defrauded, the applicant, averred, he reported the matter to Central Police Station, Nairobi and the Respondent's wife was arrested and charged with the offence of obtaining (*sic*) in criminal case No. 754 of 2017. However, the Respondent approached the applicant and proposed to settle the matter on condition that the applicant withdraws the criminal case. It was deposed that the Respondent instituted the said Small Claims suit reclaiming Kshs 170,000.00 which the Respondent had paid as part payment of the sum due to the Applicant to which the Applicant objected on the ground of lack of jurisdiction and forum shopping.
4. In response to the application the Respondent filed grounds of opposition in which it was contended that the agreement the subject matter of the said suit was entered into and attested at Machakos in the offices of the Respondent's Counsel. It was further contended that the cause of action arose in Machakos hence the suit could be properly filed in Machakos despite the fact that the Respondent



resides in Nairobi. Further, it is contended in the said grounds that both the claimant and the respondent reside in Syokimau, Machakos County.

Determination

5. I have considered the application, the response as well as the submissions. Section 11 of the *Small Claims Act*, No. 2 of 2016 which provides for Local limits of the Court's jurisdiction, states as hereunder:
 - 1) The Chief Justice shall determine and publish a notice in the Gazette designating the local limits of the jurisdiction of Small Claims Court.
 - 2) When determining the local limits of the jurisdiction of the Court, the Chief Justice shall ensure that such Courts are accessible in every sub-county and progressively in other decentralized units of judicial service delivery.
6. The parties herein seem to have been under the erroneous impression that the jurisdiction of the Small Claims Court is to be guided by section 15 of the *Civil Procedure Act*. That however is not the case since section 3 of the *Civil Procedure Act* provides as hereunder:

In the absence of any specific provision to the contrary, nothing in this Act shall limit or otherwise affect any special jurisdiction or power conferred, or any special form or procedure prescribed, by or under any other law for the time being in force.
7. It follows that where there is a special jurisdiction or power conferred by any other law, the *Civil Procedure Act* does not apply. In this case the jurisdiction of the Small Claims Court is prescribed under section 11 of the *Small Claims Act*. It follows that section 15 of the *Civil Procedure Act* is inapplicable.
8. In this case, since it is the Applicant who is contending that the Machakos Small Claims Court has no jurisdiction to hear and determine the matter, the burden was upon him to place before this Court material showing that according to the designation by the Chief Justice, Machakos Small Claims Court has no power to hear and determine the dispute in question. No such evidence has been placed before me.
9. Accordingly, this application fails and is dismissed. The costs of this application will be in the suit pending before the Small Claims Court.
10. It is so ordered.

READ, SIGNED AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 28TH DAY OF JULY, 2022.

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Moindi for the Applicant

CA Susan

