



REPUBLIC OF KENYA



KENYA LAW
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**Jemman Coffee and Mining Company Limited v Kenya Revenue Authority & another
(Civil Suit 97 of 2018) [2022] KEHC 12552 (KLR) (Civ) (25 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12552 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL SUIT 97 OF 2018
JK SERGON, J
AUGUST 25, 2022**

BETWEEN

JEMMAN COFFEE AND MINING COMPANY LIMITED PLAINTIFF

AND

KENYA REVENUE AUTHORITY 1ST DEFENDANT

KENYA BUREAU OF STANDARDS 2ND DEFENDANT

RULING

1. Before this court for determination is the notice of preliminary objection dated July 23, 2018 brought by the 1st defendant and raising the following grounds of objection:
 - i. The application and suit are fatally defective and bad in law.
 - ii. The application and suit offend the mandatory provisions of the *Government Procedures Act*.
 - iii. The plaintiff has conveniently ignored and/or by-passed clear and mandatory statutory provisions for the resolution of the ostensible dispute before this court.
 - iv. The application and suit were filed without due authority from the plaintiff company.
2. The parties were directed to dispense with the preliminary objection by written submissions.
3. I have considered the grounds laid out in the notice of preliminary objection and the written submissions and cited authorities on record.
4. A brief background of the matter is that the plaintiff lodged a suit against the 1st and 2nd defendants and Freight Shore Agencies Limited (the 3rd defendant) by way of the plaint originally dated May 14, 2018, amended on July 2, 2018 and further amended on August 4, 2021 (“the further amended



plaintiff”) and sought for reliefs in the nature of general, exemplary and special damages in the sum of kshs 46,551,710/ and a permanent injunction for loss/damage suffered as a result of the alleged detainment of the plaintiff’s goods.

5. The plaintiff was accompanied by the Notice of Motion of like date wherein the plaintiff sought for injunctive orders against the defendants pending the hearing and determination of the suit.
6. Going by the record, the suit against the 3rd defendant was withdrawn with no order on costs, on July 28, 2019.
7. The record shows that previously, the 1st defendant had lodged the preliminary objection but that the same was pending before court.
8. Returning to the preliminary objection, it is apparent from the record that the same is essentially challenging the jurisdiction of this court to entertain the abovementioned Motion and the suit generally.
9. On its part, the plaintiff submits that this court has jurisdiction to entertain the application and suit since the cause of action partly arose in Busia and partly in Nairobi.
10. The plaintiff further submits that both defendants have their principal offices in Nairobi, as well as the plaintiff itself and hence the application and suit are rightly before the court.
11. The 1st defendant by way of its submissions argues that the cause of action arose in Busia where the plaintiff’s goods were allegedly detained enroute to Kisumu, and hence the plaintiff ought to have either filed the suit in Busia or in Kisumu.
12. It is the submission by the 1st defendant that its employees as well as those of the 2nd defendant reside in Busia and that all relevant documentation in respect to the claim are in Busia.
13. For all the foregoing reasons, the 1st defendant is of the view that this court lacks jurisdiction to entertain the claim, the plaintiff having failed to comply with the provisions of section 15(c) of the Civil Procedure Act which stipulates that:

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

...

(c) the cause of action, wholly or in part, arises.”
14. On its part, the 2nd defendant supports the preliminary objection filed by the 1st defendant that this court lacks jurisdiction in the matter but for slightly different reasons.
15. The 2nd defendant argues that it is established under Section 3 of the Standards Act, cap 496 Laws of Kenya and hence by virtue of this fact, any person who is aggrieved by its decision may appeal to the Standards Tribunal (“the tribunal”) within 14 days from the notification of the act complained of, pursuant to the provisions of section 11 of the Standards Act.
16. The 2nd defendant further submits that any person who is aggrieved by the decision of the tribunal may appeal to the High Court (section 16G of the Standards Act) and hence the plaintiff has lodged its claim before the wrong forum.



17. In reply to the above, the plaintiff argues that the 2nd defendant has misinterpreted its claim since its grievance against the 2nd defendant is that the latter failed to issue it with a Certificate of Conformity and hence this court has jurisdiction over the matter.
18. Reference is made to the case of *Mukisa Biscuit Company v West End Distributors Limited* (1969) EA 696 cited in the submissions by the 1st defendant, where the court defined the term ‘preliminary objection’ in the following manner:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised in any fact that has to be ascertained or if what is sought is the exercise of judicial discretion.”
19. Upon my study of the record, while I do note the preliminary objection challenging the jurisdiction of this court to entertain the application for injunction as well as the suit lodged by the plaintiff herein. The substantive claim in this action is for payment of damages arising out of the defendant’s detention of the plaintiff’s goods that is not a dispute which cannot be determined by the Standards Tribunal. This court therefore has jurisdiction to entertain the suit. The defendants are based in Nairobi. The cause of action arose in Busia. The plaintiff had the option to choose to file the action either in Nairobi or Kisumu or in Busia High Court.
20. In the end, the preliminary objection is without merits. Consequently, the notice of preliminary objection dated July 23, 2018 is hereby dismissed with costs to the plaintiff.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 25TH DAY OF AUGUST, 2022.

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J K SERGON

JUDGE

In the presence of:

- for the plaintiff
- for the 1st defendant
- for the 2nd defendant

