



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KIAMBU**

**COMMERCIAL CASE NO 14 OF 2019**

**ACORDIA HOLDINGS LTD.....PLAINTIFF**

**VERSUS**

**MURUGA INVESTMENTS LTD..... RESPONDENT**

**RULING**

1. **Muruga Investment Limited**, the defendant, was at the material time the registered owner of the property L.R. No.5989/178 whereupon there is a development known as **Ciata Mall**. That defendant is sued by **Acordia Holding Limited**, the plaintiff. In this action the plaintiff seeks judgment against the defendant for KSh.208,416,356/=. That amount is in respect to an alleged contract for cleaning services offered by the plaintiff to the defendant concerning the property known as **Ciata Mall**.

2. Before court is a **Notice of Motion dated 26<sup>th</sup> November 2019** filed by the defendant. That application is brought under the provisions of **Section 1A, 1B and 3A of the Civil Procedure Act**. The defendant seeks dismissal of this action for want of jurisdiction. The application is based on only one ground: that is, that Ciata Mall is within the Nairobi County and therefore it is a court within Nairobi County that has territorial jurisdiction and not this court, Kiambu High Court.

**ANALYSIS AND DETERMINATION**

3. The defendant was the mover of the application. The defendant therefore had a burden of proof to prove that this court lacks territorial jurisdiction over this matter. **Section 107 (1) of the Evidence Act, Cap. 80** reveals the party who bears that burden by stating as follows:

*107. (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*

4. The defendant other than stating in its affidavit, in support of the application, that Ciata Mall is in Nairobi did no more. The defendant failed to attach any evidential document showing that indeed Ciata Mall is within Nairobi County. The defendant brought its present application on presumption that it was a foregone conclusion and a known fact that Ciata Mall is in Nairobi County. In my view the defendant needed to do more, needed to provide, proof on a balance of probability, to show that indeed Ciata was in Nairobi. It needed to show why it asserts that this court lacks territorial competence. It should not have left the issue for second guessing by the court. It was not enough to make a statement without more.

5. It follows the defendant has failed to show why, this court, Kiambu High Court, within the Kiambu County, should decline to exercise jurisdiction over this dispute. The defendant needed to do more to displace the forum chosen by the plaintiff. It failed to do so.

6. It is for the above reason the application does and must fail.

7. The application before me ought not to have been filed, in view of the lack of supporting evidence and because of that it stood little chance of succeeding. As correctly submitted by the plaintiff the application has simply succeeded to delay the progress of this case. It lacks merit.

Accordingly, the application dated 26<sup>th</sup> November 2019 is dismissed with costs.

**SIGNED AND DELIVERED VIRTUALLY THIS 18<sup>th</sup> DAY OF MARCH 2021.**

**MARY KASANGO**

**JUDGE**

18<sup>th</sup> March 2020

Before Justice Mary Kasango

C/A - Kevin

For the Plaintiff – Jimmy Maina

For the Defendant – No appearance

**COURT**

Ruling virtually delivered in their presence.

**MARY KASANGO**

**JUDGE**