

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NUMBER E511 OF 2020

MALPLAST INDUSTRIES LIMITED.....PLAINTIFF

VERSUS

ABDI KANI OMAR.....1ST DEFENDANT

ABLUN EAST AFRICA LIMITED.....2ND DEFENDANT

RULING

1. The overriding objective of the court is to do just and expeditious resolution of disputes. And therefore, applying the inherent powers of the court conferred on it under **Section 3A of the Civil Procedure Act**, the court is unlimited in removing anything on its way that prevents the expeditious disposal of a matter.

2. This is the situation obtaining in this case. The application by the Defendant dated 8/3/2021 seeking the transfer of the instant case to the Magistrate's Court is one intended to waste the court's precious time. As submitted by learned counsel, Mr. Mungai for the Plaintiff, only the High Court has powers to deal with matters under **Section 787 of the Companies Act, 2015**. That is, matters investigation of the company's affairs. Prayer (f) in the plaint is hinged under this provision. It seeks the lifting of the 2nd Defendant's veil of incorporation for purposes of executing the court's judgment as against its officers personally in the event the 2nd Defendant fails to satisfy the same.

3. It follows that the Magistrate's court has no jurisdiction to hear and determine the suit by virtue of prayer (f) in the plaint and notwithstanding other pecuniary prayers.

4. Accordingly, and for purposes of spanning the wheels of justice, the defendant's Notice of Motion dated 8/3/2021 is hereby stuck out with no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 19TH APRIL, 2021

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Mr. Ongechi for the Defendant/Applicant

2. Mr. Mungai for the Plaintiff/Respondent