



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT MACHAKOS**

Coram: D.K. Kemei J

**CIVIL SUIT NO. 25 OF 2018**

**BERNARD KIIO KISUMO.....PLAINTIFF**

**VERSUS**

**INVESCO ASSURANCE CO LTD.....DEFENDANT**

**RULING ON DIRECTIONS**

1. This ruling is in relation to the pleadings dated, **9.11.2018** and filed in court on even date. A perusal of the pleadings indicates that the subject matter of the suit is judgements obtained in the subordinate court being CMCC 260, 261, 262, 278, 279 and 424 of 2018 in respect of a road accident involving motor vehicle KAW 567B that is said to have been insured by the defendant. This is evidenced by the documents in support of the claim and this elicits the issue of jurisdiction. The issues to be determined are whether this court has jurisdiction and what orders may the court make.

2. In law no court or person assumes jurisdiction. Jurisdiction is a creation of statute. In Kenya, all courts derive their power from the Constitution under Article 159. The Constitution provides for the establishment of the Superior Courts under Article 162 and subordinate courts under Article 169. Judicial power is exercised by the courts which consist of;

- a) The Supreme Court
- b) The Court of Appeal.
- c) The High Court.
- d) Subordinate courts including Magistrates Courts, Kadhis Courts, Courts Martial. (See Article 169 of the Constitution).

3. Under the subordinate courts are the following hierarchy of courts as per the Magistrates Courts Act, 2015.

- a) Chief Magistrate- pecuniary jurisdiction of Kshs 20,000,000/-
- b) Senior Principal Magistrate Kshs 15m/-
- c) Principal Magistrate Kshs 10m/-
- d) Senior Resident Magistrate Kshs 7m/-
- e) Resident Magistrate Kshs 5m/-

4. Jurisdiction is specifically granted each court by law. The jurisdiction for instance of the High Court is unlimited in civil matters except employment and land matters. However the Magistrates Courts Act, 2015 makes provision for the nature of civil suits that are to be instituted in respect of a subject matter in accordance with the grade of a Magistrate.

5. In selecting a court with power over the type of litigation, regard must be made to the pecuniary limitation of such courts and the enabling law which empowers such court to hear such a case (see Section 4 and 12 of the Civil Procedure Act). The litigant must before choosing where to file a matter be informed by the subject matter of dispute. The question to consider before choosing the court is;

- i) What is the pecuniary value of the subject matter?

ii) Which court is the lowest grade competent to try the suit?

See Section 11 and 15 of the Civil Procedure Act

6. In the instant case, the provisions of Section 11 of the CPA which require; “a suit to be instituted in the lower grade of court competent to try and determine it.” Combined with section 12 and 15 of the CPA, requiring suits to follow subject matter in terms of pecuniary and territorial jurisdiction all dictated the fact that the High Court was the wrong court for the instant case. The case could only be tried before the magistrate’s court because as indicated it is the court of the lowest grade that is competent to handle the instant matter.

7. With regard to the second issue, Section 18(1) of the CPA is to the effect that “*On the Application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice the High Court may at any stage:*

***(a) Transfer any suit or other proceedings pending before it for trial or disposal to any subordinate to it and competent to try or dispose of the same; or***

***(b) Withdraw any suit of other proceedings pending in any court subordinate to it, and thereafter-***

***(i) Try or dispose of the same,***

***(ii) Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same,***

***(iii) Transfer the same for trial or disposal to the court from which it was withdrawn.***

8. The principles upon which this court will exercise its discretion as regards the transfer of cases have been well laid down in the Ugandan case of **David Kabungu v Zikarenga High Court Misc. App. 36 of 1995 [1995] 3 KALR** in which Okello J stated as follows:-

*“Section 18(1) of the Civil Procedure Act gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. ... There are also authorities that the principal matters to be taken into consideration are balance of convenience, questions of expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication must be refused. ....”*

9. In addition, the overriding objective of the Civil Procedure Act and Rules made thereunder is to facilitate the just, expeditious, proportionate and or affordable resolution of civil disputes governed by the Act. In the furtherance of this overriding objective, the courts are mandated to ensure the just determination of proceedings, **efficient disposal of business of the court, the efficient use of available judicial and administrative resources** and the timely disposal of proceedings at a cost affordable by the respective parties. I find it would be efficient to allow the case now pending before this court to be determined by the magistrate’s courts. A transfer of the suit would be in the best interest of both parties, and there is no prejudice that shall be occasioned because the main suit is yet to be heard and the magistrate’s court is a stone throw away from this court.

10. In the result I find the instant suit was improperly filed before this court and in *suo moto* order that the same be transferred to the magistrate’s court. I direct that the matter shall be mentioned before the magistrate’s court on 23<sup>rd</sup> June, 2020 for directions on how to proceed.

It is so ordered.

**Dated and delivered at Machakos this 29<sup>th</sup> day of May, 2020.**

**D. K. Kemei**

**Judge**