

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 241 OF 2017

LAVINGTON SECURITY LIMITED.....PLAINTIFF

VERSUS

CONSOLIDATED BANK OF KENYA.....1ST DEFENDANT

LAVINGTON GUARDS SERVICES LIMITED.....2ND DEFENDANT

EMMANUEL MASWACH CHELIMO.....3RD DEFENDANT

SIMON KIPKORIR TAIGET.....4TH DEFENDANT

RULING

The plaintiff filed this case against the defendants for loss of funds occasioned by the defendants jointly and severally, general damages for conversion, fraud, negligence and breach of duty as well as trust. The foundation of those prayers is to be found in the body of the plaint whereby it was alleged the defendants jointly and severally, by their fraudulent conduct caused the plaintiff a loss of Kshs. 179,478,050.29 particulars of which have been provided in paragraph 22 of the plaint. The defendants have denied the plaintiff's claim in their respective defences.

Subsequently, the 1st defendant filed an application to have the matter transferred from the Civil Division to the Commercial and Admiralty Division on the premise that this is a commercial matter citing rule 7 of the classification of Commercial and Tax Division matters, 1997. The 2nd and 3rd defendants support the 1st defendant's application while the plaintiff opposes the same.

The parties agreed that the application shall be determined on affidavit evidence. This court is aware of the classification of commercial matters aforesaid by the Chief Justice. These were formulated to facilitate expeditious disposal of commercial matters which then, and even today, were said to have taken too long to be determined. The Commercial and Tax Division like all other divisions of the High Court, is an administrative division with administrative directions, not jurisdiction, as may loosely be understood, to determine matters filed therein. It remains a division of the High Court, which under Article 165 (2) (3) (a) has unlimited original jurisdiction in Criminal and Civil matters. A commercial dispute does not cease to be a civil matter just because it is lodged in the commercial division. More importantly however, going by the pleadings the defendants have been accused by the plaintiff of impersonation, misrepresentation, fraud and theft which can be discerned from the plaint and the prayers set out therein.

By any standards, this cannot be purely a commercial dispute even if the 1st defendant is accused of being the conduit used in the whole process. I have looked at the authorities cited, and I am persuaded that this matter is properly before the Civil Division and shall not be transferred. That being the case and considering that the pleadings have been crossed, the parties shall now comply fully, if they have not done so, with Order 11 of the Civil Procedure Rules within 30 days from the date of this ruling so that the matter is listed for hearing.

The costs of this application shall be paid to the plaintiff by the defendants.

Dated, signed and delivered at Nairobi this 10th Day of April, 2019.

A.MBOGHOLI MSAGHA

JUDGE