



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISCELLANEOUS CIVIL APPLICATION NO.E146 OF 2018

HARMO ENGINEERING & BUILDING

CONTRACTORS LIMITED.....APPLICANT

VERSUS

PRIME STEEL MILLS LIMITED.....1ST RESPONDENT

WESTERN STEEL MILLS.....2ND RESPONDENT

RULING

(1) Before this Court is the Notice of Motion dated **24th October 2018** in which **HARMO ENGINEERING & BUILDING CONTRACTORS LIMITED**, (the Defendant/Applicant) herein seeks for the following orders:-

“1. SPENT

2. SPENT

3. Nairobi Milimani Commercial Court Civil suit No.4018 of 2017 be transferred to the Chief Magistrate’s Court Eldoret for hearing and determination.

4. Costs of the application be borne by the Respondent.

(2) The Application was supported by the Affidavit dated **24th October 2018** sworn by **ALISON ZAPHANIAH MOGEGE**, the Managing Director of the Defendant/ Applicant. The Plaintiff/1st Respondent **PRIME STEEL MILLS LIMITED**, opposed the application for transfer of the suit through the Replying Affidavit dated **10th December 2018**, sworn by one **RAVI GADA** the Financial Controller of the 1st Respondent Company. Pursuant to directions given by the Court the application was canvassed by way of written submissions. The Applicants filed their written submissions on **7th February 2018** whilst the 1st Respondent filed its written submissions on **8th March 2018**.

BACKGROUND

(3) The parties herein had entered into an agreement for supply of steel products by the Respondents to the Applicants on the basis of credit facilities which credit facilities were to run for a period of thirty (30) days before payment. The Plaintiff/1st Respondent alleges that the Applicant/Defendants failed to pay them a total sum of **Kshs.9, 869, 729.00** which led to the 1st Respondent on **7th June 2017** filing of the present suit at the Chief Magistrate’s Court in Nairobi.

(4) The Defendant/Applicant then filed this present application seeking to have the suit transferred to Eldoret Law Courts. The basis for the Application is that the Defendant’s office are based in Eldoret and they have no branch in Nairobi or indeed elsewhere. That the supply of goods was to take place in Eldoret, and payment was also to be effected in Eldoret. The Applicant submits that the ends of justice require that a suit be filed where the Defendant resides or does business.

(5) The 1st Plaintiff/Respondent avers that this application is frivolous, vexatious, fueled by malice and is merely a ploy to delay or derail the determination of the suit. The 1st Plaintiff/Respondent insists that the suit is properly filed in Nairobi being the venue of the Corporate Head Office of the 1st Plaintiff. They further insist that the oral contract between the parties was entered into in Nairobi. Finally the 1st Respondent contends that the Chief Magistrates’ Court in Nairobi has the requisite jurisdiction to hear and determine the suit.

ANALYSIS AND DETERMINATION

(6) There is only one issue for determination before this Court, that is whether the suit being **CMCC No.4018 of 2017** ought to be transferred to the Eldoret Law Courts for hearing and determination.

(7) There is no doubt whatsoever that the Chief Magistrates’ Court in Nairobi is clothed with requisite jurisdiction to determine the suit. The question really is whether the suit ought to be heard in Nairobi or in Eldoret.

(8) **Section 15 of the Civil Procedure Act** provides as follows:-

“....every suit shall be instituted in a court within the local limits of whose jurisdiction inter alia the cause of action wholly or in part arises.” [own emphasis]

Explanation (3) to Section 15 states as follows:-

“(3) In suits arising out of a contract, the course of action arises within the meaning of this Section at any of the following places namely:-

- (i) The place where the contract was made.**
- (ii) The place where the contract was to be performed or the performance thereof completed.**
- (iii) The place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.**

(9) The 1st Respondent states that the parties entered into an oral contract within the Head Office of the 2nd Respondent in Nairobi. This however is disputed by the Defendant/Applicant. The Defendant/Applicant maintains that the goods forming the subject matter of the contract were to be supplied in Eldoret and payment for said goods was also to be made in Eldoret. The Defendant/Applicant further states that its Head office as well as the offices of the 2nd Respondent are situated in Eldoret within Uasin Gishu County.

(10) In deciding whether or not to transfer a suit a court ought to consider the following factors:-

- Motive and character of the proceedings.
- Nature of relief(s) sought.
- Convenience of administration of justice.
- Expenses parties are likely to incur.
- Interests of justice as well as possibility of undue hardship to any party.

(11) In **HANGZHOU AGROCHEMICAL INDUSTRIES LTD –Vs- PANDA FLOWERS LIMITED [2012]eKLR Hon Justice George Odunga** held as follows:-

“Efficient disposal of the business of the Court and efficient use of available judicial and administrative resources would necessarily demand that as much as possible cases be filed within the jurisdiction of the subject matter so not to clog other registries while others remain unutilized. As for timely disposal of the proceedings again it would be prudent that the cases which have been instituted and are already being processed should not be unduly interrupted. The need to have the cases disposed at a cost affordable to the respective parties on the other hand would call for the court to examine the implication involved in conducting the trial at one place and not another. It is clear therefore that it is a matter of balancing the interest of the parties with the ultimate aim of doing justice.” [own interest]

(12) I have considered the unique characteristics of this suit. The Defendant/Applicant as well as the 2nd Respondent are both based only in Eldoret. The contract (supply of goods) was to be wholly performed in Eldoret and the payment was to be made in Eldoret. In the circumstances my considered opinion is that this suit ought to be heard at the Eldoret Law Courts.

(13) Accordingly I do allow this application for transfer of the suit in terms of prayer (c) thereof. Each party to meet its own costs.

Dated in Nairobi this 24th day of September 2019.

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Justice Maureen A. Odera