



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA**

**AT MACHAKOS**

**HC MISC APPL NO. 249 OF 2019**

**MATUU FLOUR MILLERS LIMITED....APPLICANT**

matter. Section 15 of the civil Procedure Act provides that every suit shall be instituted in a court within the local limits of whose jurisdiction the Defendant or each of the Defendants actually or voluntarily resides or carries on business or personally works for gain or have acquiesced in such institution of suit of the cause of action wholly or in part arises. Again Section 12 of the said Act provides that subject to pecuniary jurisdiction or other limitation prescribed by law suits shall be instituted where the subject matter is situate.

8. On the other hand the Magistrate's Court Act Cap 10 Laws of Kenya vide Section 3(2) gives a Magistrate's Court countrywide jurisdiction to hear and determine any suit notwithstanding where the Defendant resides or where the cause of action arose. This seems to appear to be in conflict with the Civil Procedure Act which deals with civil procedural law whereas the Magistrate's Court Act is the substantive law establishing the Magistrate's Courts and conferring it with geographical as well as pecuniary jurisdiction to hear and determine disputes. It is noted that the Civil Procedure Act was enacted much earlier than the Magistrate's Court Act and that in the event of a conflict between the two statutes the Provision in the latter statute would be deemed to have amended the earlier provision (see **Mohamed Sitabani Vs= George Mwangi Karoki Hcca 13 of 2002**). Even though this may be the position, the guiding principles to all courts is that where a suit is filed in a court that lacks jurisdiction to hear and determine the suit, then the suit would be deemed a nullity as per the decision of Nyarangi J A in the case of **Owners Of Motor Vessel "Lilian S" Vs Caltex Oil (K) Ltd [1989] KLR 1** that:-

**"Jurisdiction is everything without which a court of law has no power to make one more step where a court of law has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter the moment it holds the opinion that it is without jurisdiction."**

9. The suit in Kithimani was filed before a court that had jurisdiction to hear and determine the subject suit.

10. Having satisfied myself of jurisdiction I shall embark on the issue of transfer. 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. ...."**

11. The Applicant seems to base its application on the convenience grounds and wants it transferred to Machakos CM's Court for trial and final determination. The Respondent seems to admit that the convenience of the Applicant in seeking that the suit should be heard in Machakos CM's Court because of their failure to respond the application. A perusal of the pleadings indicates that the plaintiff seeks payment of special damages of about Kshs 8m/-. I am curious why the applicant opted to specify that the suit be transferred to Machakos whereas the nearer court is Kangundo law courts and this does not resonate with Section 14 and 15 of the Civil Procedure Act that provide that a suit be filed in a court within the local limits of the residence of the defendant or where the cause of action arose. In as much as this suit is properly filed before Kithimani PM's court since the cause of action is said to be based on an accident that occurred between the applicant and the respondent at Kithimani- Matuu Road, the nearer court for this matter to be heard would be Kangundo.

12. The overriding objective of the Civil Procedure Act and Rules made thereunder is to facilitate the just, expeditious, proportionate and 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 just, convenient and fair to let the case now pending at Kithimani PM's Court be determined at Kithimani Magistrates courts. A transfer of the suit to Machakos would not be in the best interest of both parties as there is no evidence or directives from the Chief Registrar of the Judiciary to the effect that there has been a change in the status of the Kithimani court or that the said court has been degazetted from being a PM court meaning that an officer at the said court can perform duties concomitant to the status of the court on acting capacity. In addition, the applicant has not convinced the court why the claim is Kshs 8m/- as opposed to Kshs 7m/- whether by way of documentation in support of the claim or other sufficient information so that the mind of the court is clear that the claim is as per the pleadings. I find that the present application by the applicant in my view amounts to forum shopping. There is absolutely no justification why this case cannot be heard and determined by the Kithimani Magistrates Court.

13. All that remains to be done is for the head of station once contacted to allocate a Magistrate to hear the matter in acting capacity in line with the status of the court.

14. In the result I find the Applicant's application dated 29.4.2018 lacks merit. The same is dismissed with no orders as to costs. The matter shall be determined at Kithimani law courts.

It is so ordered.

**Dated and delivered at Machakos this 17<sup>th</sup> day of December, 2019.**

**D. K. Kemei**

**Judge**