



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL APPEAL NO 4 OF 2013

(Appeal from original Order in Kandara SPM Civil Case No 111 of 2012 – C Kithinji, SRM)

PAULO ANYANZWA KUTEKHA.....APPELLANT

VERSUS

STEEL STRUCTURES LIMITED.....RESPONDENT

J U D G M E N T

1. The Appellant herein, **Paulo Anyanzwa Kutekha**, was the plaintiff in the lower court while the Respondent was the defendant. The Appellant's suit (a claim for damages on account of industrial accident) was struck out by the trial court upon a preliminary objection raised by the Respondent on the issue of the court's territorial jurisdiction. This appeal is against that order.

2. The appeal was canvassed by way of written submissions. The Appellant filed his submissions on 24/05/2017; the Respondent filed its submissions earlier on 22/05/2017. I have read and considered those submissions, including the cases cited.

3. For purposes of this appeal, there were two statutes that governed the civil jurisdiction of magistrates' courts at the time the suit was filed. The **substantive** statute that established magistrates' courts and declared their various jurisdictions was the **Magistrates' Courts Act, Cap 10**. That statute provided at section 3 thereof as follows –

“3. (1) There is hereby established the Resident Magistrate's Court, which shall be a court subordinate to the High Court and shall be duly constituted when held by a chief magistrate, a senior principal magistrate, a senior resident magistrate or a resident magistrate.

(2) The Resident Magistrate's Court shall have jurisdiction throughout Kenya.”

At section 5 the Act provided for various pecuniary limits of the civil jurisdiction of magistrate's courts. This Act commenced operation on **1st August 1967**.

4. The **procedural** statute on the other hand was (and still is) the **Civil Procedure Act, Cap 21** which commenced operation on **31st January 1924**. This Act, in various provisions (sections 11, 12, 13, 14 and 15), provides for places of suing. These provisions are obviously administrative in nature with the intention that the place of suing be governed by certain rules for purposes of convenience, to minimize costs, etc. These provisions under the **Civil Procedure Act** cannot have been intended to oust, and should not be interpreted as ousting, the country-wide jurisdiction of Resident Magistrates' Courts conferred by the substantive statute, the **Magistrate's Courts Act, Cap 10**. In any event, this Act came in time much later than the **Civil Procedure Act, Cap 21**. Under rules of interpretation and construction, the latter statute is deemed to amend the earlier statute where there is an apparent conflict.

5. The remedy for not following guidelines provided in sections 11, 12, 13, 14, and 15 of the **Civil Procedure Act** regarding the place of suing would not be, in all justice, the striking out of the suit, because of the country-wide jurisdiction conferred by the substantive Act, Cap 10; it would lie in an appropriate order for costs, or the exercise of the **High Court's** power to withdraw and transfer cases instituted in subordinate courts under **section 18** of the **Civil Procedure Act**.

6. That was the legal position when the Appellant's suit was struck out by the lower court. It should not have been struck out. It should have been allowed to proceed; alternatively the lower court could have directed that an appropriate application be made to the High Court under section 18 of the **Civil Procedure Act**.

7. It will be noted that now the position is different. The **Magistrates' Court's Act, Cap 10** was repealed and replaced by the **Magistrates' Courts Act, No 26 of 2015** that commenced operation on 2nd January 2016. This followed the promulgation of the new **Constitution of Kenya, 2010** which at **Article 169(1)** established subordinate courts (including magistrates' courts). Under Article 169(2) **Parliament** was

to enact legislation to confer jurisdiction, functions and powers upon the subordinate courts. It did so in the *Magistrates' Courts Act, No 26 of 2015* as far as those courts are concerned.

8. This new Act appears to have removed the country-wide jurisdiction of magistrates' courts. At any rate, there is not a similar provision in the statute. The territorial jurisdictions set out in the *Civil Procedure Act*, therefore now appear to be substantive provisions regarding jurisdiction of the magistrate's courts.

9. For purposes of this appeal, as already found, the lower court had jurisdiction to hear and determine the suit. The suit was wrongly struck out.

10. In the event I will allow the appeal and set aside the order of the lower court that struck out the Appellant's suit. The suit is hereby reinstated for disposal in the usual way. It is so ordered.

11. The Appellant shall have costs of this appeal.

DATED AND SIGNED AT MURANG'A THIS 12TH DAY APRIL 2018

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 13TH DAY OF APRIL 2018