



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**  
**CIVIL CASE NO 483 OF 2014**

**LITEIN TEA FACTORY COMPANY LIMITED.....1ST PLAINTIFF**

**KTDA MANAGEMENT SERVICES LIMITED.....2ND PLAINTIFF**

**VERSUS**

**DAVIS KIPLAGAT MUTAI.....1ST DEFENDANT**

**PATRICK KIPNGETICH CHEPKWONY.....2ND DEFENDANT**

**RICHARD K. CHEPKWONY.....3RD DEFENDANT**

**JOSPHAT KIGEN.....4TH DEFENDANT**

**RICHARD KIPKEMOI MIBEI.....5TH DEFENDANT**

**THE REGISTRAR OF COMPANIES.....6TH DEFENDANT**

**RULING**

1. For the determination of the Court were the issues of Preliminary Objection raised by the 1st – 5th Defendants. The objections were primarily based on the issues of jurisdiction of this Court in determining the issues; they averred that the dispute between the parties was over the running of a tea factory, which was located within Kericho County. It was the Defendants contention therefore, that the matter should be transferred and heard at the High Court at Kericho, as the cause of action arose within the precincts and jurisdiction of the Courts at Kericho.
2. They went further to adduce evidence in support of their raised objections; (1) that the factory was located within Kericho County, (2) that the issues in dispute allude to the fact that the matter and cause of action arose within Kericho County, (3) the matter being filed and heard in Nairobi was detrimental to the Defendants and that (4) all the parties, including the 1st Plaintiff and the 1st – 5th Defendants were all based in Kericho. It was the Defendants contention that in the interests of Section 1B sub-section (1)(c) & (d), that the matter be transferred to the High Court at Kericho.
3. Further, it was urged that for the benefit of the parties involved, procuring of witnesses attendance to Court, and that the convening of the matter at the High Court in Nairobi was not conducive nor beneficial to the parties, and would involve incurring expenses.
4. The Plaintiffs objected to the Preliminary Objections raised by the Defendants. On their part, they contended that the issue at hand involved a dispute as to the registration of the tea factory, Chelal Tea Factory Company Limited. Further, it was contended that the issue of jurisdiction as raised by the Defendants was an attempt at disrupting the expeditious disposition of the matter, and that in

any event, that there would be no need to transfer the suit as there are no cogent or reasonable grounds for the Court to do so.

5. It was alluded to that the 1st Plaintiff was located in Nairobi, as was the witness, and that in any event, the Defendants had only filed the witness statement of one (1) witness, and as such, there would be no extraordinary costs involved in the procuring of the witness for attendance to Court. Further, it was adduced that not all the Defendants were from Kericho County, and that therefore, there would be no need to have the matter transferred there. Lastly, it was contended that the main issue was with regards to the registration of the Company, and the running thereof, and which issues could be effectively and effectually disposed off in at the High Court in Nairobi.
6. After discerning the issues concerned, the issue for contention was whether the matter as filed presently at the High Court in Nairobi, has the requisite jurisdiction to hear and determine the issues. In this regards, the Defendants were of the contention that it was apt for the matter to be transferred to the High Court at Kericho. The Plaintiffs objected to the same, stating that no cogent reasons had been adduced to warrant such transfer.
7. The jurisdiction of this Court to hear and determine matters of a civil nature is predicated upon the provisions of Article 165, more particularly sub-article (3)(a), as read together with Sections 5 of the Civil Procedure Act. Under Section 5, it is provided that;

‘Any court shall, subject to the provisions herein contained, have jurisdiction to try all suits of a civil nature excepting suits of which its cognizance is either expressly or impliedly barred.

8. Under Article 165(3)(a) it is provided that;

Unlimited original jurisdiction in criminal and civil matters. The limitation of the High Court as enunciated under Section 5 of the Civil Procedure Act are set out under Articles 163(1), as read together with Articles 165(3) & (5) of the Constitution.

9. This Court, will not have the jurisdiction to hear matters reserved for the purview of the Supreme Court, as announced under Article 163, the Court of Appeal of the Court under Article 164, and matters reserved for Courts established under Article 162(2).
10. With regards to the issue of jurisdiction therefore, this Court has unlimited jurisdiction to hear and determine all civil issues, save for those as highlighted hereinabove. What therefore remains to be determined is whether the instant matter was properly presented before the Court or that the same should be transferred to the High Court at Kericho.
11. The issue in dispute is with regards to the registration and running of the Chelal Tea Factory. The factory, as had been stated by the parties, is situate in Litein, Kericho County, although it was incorporated in Nairobi and is an alleged subsidiary of the 1st Plaintiff. From the pleadings, it is not discernible whether the factory’s offices are based in Nairobi or Kericho, but that the factory itself, of which the registration thereof is the subject matter herein, is located as fore mentioned.
12. However, what is specifically stated is that the issue arising is within the purview of the Registrar of Companies, whose offices are based in Nairobi, and that therefore, the cause of action arose in Nairobi.
13. Given that it is not ascertainable from the pleadings where the cause of action arose, and that it is not also discernible where the offices of the 1st Plaintiff are situate, save for the address provided in the pleadings, the Court would not be seen to guess as to where such 1st Plaintiff offices are situate.
14. Pursuant to Section 15-Explanation (2) in the Civil Procedure Act, therefore, the Court would seek to be guided by the said provisions, where it is provided that;
15. Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

- a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- b) any of the defendants (where there are more than one) at the time of the

commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or

c) the cause of action, wholly or in part, arises. Under explanation (2), it is provided that;

***Explanation.(2)—A corporation shall be deemed to carry on business at its sole or principal office in Kenya, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. (Emphasis added).***

16. The address of the 1st Plaintiff is provided in the correspondences and pleadings as; Litein Tea Factory Company Limited P.O Box 40, LITEIN.
17. The 1st - 5th Defendants contended that they live in either Litein or the larger Kericho County, and for the most part, their addresses are provided to be in Roret, which is a sub-county in Kericho County. The registered office of the company was located at LR No 231B Roret Kapkugerwet Road Roret, which the address provided as P.O Box 32-20204 Roret. The nearest Court in which the local limits in which there is jurisdiction would therefore be deemed to be Kericho.
18. No objectifiable reason had been adduced by the Plaintiffs save to state that the matter was with regards to the registration of Chelal Tea Factory Company Limited and that therefore, the matter would best be heard in Nairobi. This, to the Court, does not afford a cogent reason as to why the matter should not be transferred to the High Court at Kericho.
19. The Defendants, in most part, and other shareholders, are residents of Roret, in which the said factory lies, and who have a stake, and therefore justifiable interest, in the outcome of the instant suit. Both the 1st Plaintiff and the 1st- 5th Defendants are resident within the local jurisdiction of the High Court at Kericho.
20. No prejudice, as none has been established, shall be occasioned upon the Plaintiffs if such transfer is allowed. This would further allow for the efficient, timely disposal and cost effective disposition of the matter.
21. In accordance, therefore, with the provisions of Section 5, as read together with Section 15 of the Civil Procedure Act, this Court, in exercise of its powers conferred upon it by Article 165(3) of the Constitution of Kenya, as well as Sections 1B & 3A of the Civil Procedure Act, allow for the instant matter to be transferred and heard at the High Court at Kericho.

**Dated, signed and delivered in court at Nairobi this 24<sup>th</sup> day of February, 2016.**

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**C. KARIUKI**

**JUDGE**