



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO 271 OF 2014

ACTIVE AUDIO VISUAL SERVICES.....PLAINTIFF

VERSUS

WANDERJOY PARTY WORLD LTD.....DEFENDANT

RULING

INTRODUCTION

1. The Plaintiff's Notice of Motion dated 2nd October 2014 and filed on 6th October 2014 was brought under the provisions of Sections 1A & 3A of the Civil Procedure Act as well as Order 13 Rule 2 of the Civil Procedure Rules. The Application sought for orders:-
 - i. **THAT Judgment be entered against the Defendant for the admitted sum of Kshs 4,900,000/=**
 - ii. **THAT costs be provided for.**

THE PLAINTIFF'S CASE

2. The Plaintiff's application was supported by the Affidavit of David Karanja Kamau, the Director of the Plaintiff. It was sworn on 2nd October 2014. It filed its written submissions dated 11th November 2014 on even date.
3. It contended that it agreed to hire out its equipment and provide the Defendant with media coverage equipment and services at the Defendant's instance and request. It was a term of the agreement that the Defendant would pay the Plaintiff the full amount owed for the media equipment and for any services rendered to them by the Plaintiff. However, the Defendant reneged on the agreement to pay the Plaintiff for the equipment hired out and had failed to pay it a sum of Kshs 8,898,351/=.

THE DEFENDANT'S CASE

4. In response to the said application, on 23rd October 2014, the Defendant filed its Replying affidavit sworn on its behalf by Maina Wandere on even date. The Defendant also filed Grounds of Opposition on the same day. The Defendant filed its submissions dated 5th December 2014 on 9th December 2014.

5. It confirmed that it hired out media coverage equipment and utilised the services of the Plaintiff for media coverage of events whereupon the plaintiff issued invoices for the sum of Kshs 8,898,351/=. However, it challenged and questioned the amounts shown on the Plaintiff's invoices as the same appeared inflated, exaggerated and overpriced. Subsequently a meeting was held between the parties and after reconciliation of accounts, it was found that only an amount of Kshs 4,900,000/= was due and payable by the Defendant to the Plaintiff.

LEGAL ANALYSIS

6. After a careful evaluation of the facts and submissions by the parties, it was evident that the matter herein was clearly a dispute which arose out of a contract for hire of media coverage equipment and provision of services to the 3rd Defendant which the Plaintiff provided to the Defendants. However, it had failed, neglected and/or refused to pay the Plaintiff the said sum of Kshs 8,898,351/=.
7. Evidently, there was no commercial element in the matter herein that would warrant the same being heard in the High Court of Kenya Milimani Law Courts Commercial & Admiralty Division.
8. In the **Practise Directions Relating To The Filing Of Suits, Applications and Reference in Proper Court, 2009 Gazette Notice No 1756** it is clearly stipulated as follows:-
 1. ...
 2. **Where suits have already been filed in the wrong court, the Court should exercise its authority ...to return the plaint to be presented to the court in which suit should have been instituted, without prejudice to any other powers that it may possess under the law to strike out the pleadings as an abuse of the court process.**
9. It is critical that parties file matters in the assigned Divisions of the High Court to avoid any delays in the determination of the said matters. Indeed, the court in which a suit is filed is to be determined in accordance with the guidelines already set down and not according to the preference or convenience of the plaintiff.
10. For the foregoing reasons, the court was thus hesitant to make a determination of the present application for fear of arriving at a decision that would be different from what a judge who would ordinarily deal with the same in the Civil Division would arrive at.

DISPOSITION

11. Accordingly, the upshot of this court's ruling is that the Plaintiffs' Notice of Motion application dated 2nd October 2014 and filed 6th October 2014 is hereby transferred to the High Court of Kenya Milimani Law Courts Civil Division for determination. It is hereby directed that the file be placed before the Presiding Judge of the said Civil Division for a mention on 16th April 2015 for his further orders and/or directions.
12. The court did not make any orders as to costs as it did not deal with the substantive issues that had been raised herein.
13. It is so ordered.

DATED and DELIVERED at NAIROBI this 24th day of March 2015

J. KAMAU

JUDGE