



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL SUIT NO 245 OF 2013
FARAM E.A. LIMITED.....PLAINTIFF
VERSUS
ATTORNEY GENERAL1ST DEFENDANT
THE PRINCIPAL SECRETARY
MINISTRY OF HEALTH.....2ND DEFENDANT
THE DIRECTOR NATIONAL BLOOD
TRANSFUSION SERVICES.....3RD DEFENDANT

RULING

INTRODUCTION

1. The Plaintiff's Notice of Motion application dated 8th September 2014 and filed on 11th September 2014 was brought under the provisions of Sections 1A, 1B and 3A of the Civil Procedure Act, Order 2 Rule 15(1)(a), (b), (c) and (d) (sic) Civil Procedure Rules and all other enabling provisions of the law. It sought the following orders:-
 - a. **THAT the defendants (sic) defence be struck out with costs and interest.**
 - b. **THAT judgment be entered for the plaintiff against the defendants as prayed in the plaint.**
 - c. **THAT the defendants do pay the costs of this application.**

THE PLAINTIFF'S CASE

3. The application was supported by the Affidavit of Erastus Momanyi Moruri, the Plaintiff's Managing Director. It was sworn on 8th September 2014. The Plaintiff's written submissions were dated 13th October 2014 and filed on 15th October 2014.
4. The Plaintiff's claim was for a sum of Kshs 17,367,755/= being the outstanding balance on account as at 13th June 2012 arising out of diagnostic and scientific equipment including blood bank refrigerators and medical freezers and other services that were delivered to the 3rd Defendant at the 3rd Defendant's request and instance.

THE 1ST DEFENDANT'S CASE

5. In opposition to the Plaintiff's claim, on 26th September 2014, the 1st Defendant swore filed Grounds of Opposition that were dated 25th September 2014. Its written submissions were dated 16th October 2014 and filed on 21st October 2014.
6. In its said Grounds of Opposition, the Defendant stated that the bank loans and other borrowings from Standard Chartered Bank Kenya Limited, Westlands Branch to supply its customers, including the 3rd Defendant and payment of commercial interest rate of twenty five (25%) per cent monthly with effect from 13th July 2012 never formed part of the contract with the 3rd Defendant.

LEGAL ANALYSIS

7. 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 to supply certain equipment to the 3rd Defendant and other customers in which the Plaintiff contended that the Defendants had failed, neglected and/or refused to pay the Plaintiff the said sum of Kshs 17,367,755/= together with interest at commercial bank rates of twenty five (25%) per cent at monthly rates.
8. 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.
9. 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.**
10. 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.
11. 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

12. Accordingly, the upshot of this court's ruling is that the Plaintiffs' Notice of Motion application dated 8th September 2014 and filed 11th September 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 March 2015 for his further orders and/or directions.
13. The court did not make any orders as to costs as it did not deal with the substantive issues that had been raised herein.
14. It is so ordered.

DATED and DELIVERED at NAIROBI this 12th day of March 2015

J. KAMAU

JUDGE