

REPUBLIC OF KENYA

High Court at Kakamega

Civil Case 129 of 2011

PATRICK RAPANDO WAMBANI PLAINTIFF

V E R S U S

PATRICK M. MUGATA RESPONDENT

R U L I N G

The plaintiff filed this suit seeking **KShs.1,113,000/=** from the defendant. The claim is based on money paid to two individuals, namely Emmanuel Kawesi and Rashid Ijuuko who came from Uganda. The two individuals were introduced to the plaintiff by the defendant who is his workmate at Mumias Sugar Company Ltd.

The defendant filed a preliminary objection dated 3rd August 2011. The defendant maintains that this court lacks jurisdiction to hear and determine the case as the contract was entered into in a foreign country, the money was paid to foreigners in a foreign country and the subject matter was based in a foreign country. Further, the defendants contend that there is not privity of the contract between the plaintiff and the defendant, the plaintiff has no cause of action against the defendant and that the suit is an abuse of the court process.

Both parties filed their respective submissions in support and against the preliminary objection. The defendant's position is that he only introduced the two gentlemen from Uganda to the plaintiff. There is no privity of contract between the two parties herein. The defendant was made to sign an agreement under duress on 31st July 2009 after having been arrested and coerced by the police.

On his part, the plaintiff contends that it is the defendant who promised to deliver timber to him through the Ugandans. The payment was made to the Ugandans through the Kenya Commercial Bank Mumias Branch in Kenya but the Ugandans were to collect the money through their Kenya Commercial Bank Kampala branch account. When the payment was being made, the defendant was present and he instigated the payments. It is the defendant who introduced the two Ugandans. Further, the claim is based on the agreement entered into on 31st July 2009.

I have gone through the pleadings and the submissions by the parties and I am satisfied that the preliminary objection cannot settle the dispute herein. Parties entered into an agreement on 31/7/2009 whereby the defendant agreed to pay the plaintiff the amount being claimed. Whether that agreement is valid or not cannot be determined at this stage. The payments were deposited at Kenya Commercial Bank, Mumias Branch and therefore in Kenya. The fact that the recipient was based in Uganda does not oust the jurisdiction of this court. The agreement was to be fulfilled in Kenya in that the timber was to be delivered to the plaintiff in Kenya. The offer to supply the timber was made by the Ugandans through their Kenyan contact who is in Kenya. Indeed it appears that the plaintiff does not know the Ugandans.

In the end, I do find that there is nothing foreign about this suit. The two parties are based in Kenya. There is no agreement that was signed in Uganda. The preliminary objection is not merited and the same is dismissed with costs.

I have noted that the claim is for **KShs.1,113,000/=** plus costs and interest. The chief magistrate can handle the dispute. I hereby order that the matter be transferred to the Chief Magistrate's Court, Kakamega for determination.

Delivered, dated and signed at Kakamega this 7th day of February 2013

SAID J. CHITEMBWE
J U D G E