



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & TAX DIVISION**  
**CIVIL CASE NO 114 OF 2013**

**THE NAIROBI IMAGING CENTRE LIMITED.....PLAINTIFF**

**VERSUS**

**THE KENYA MEDICAL ASSOCIATION.....1<sup>ST</sup> DEFENDANT**

**KNIGHT FRANK KENYA LIMITED.....2<sup>ND</sup> DEFENDANT**

**M/S WANGAI T/A SANNEK AUCTIONEERS.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Plaintiff's Notice Motion application dated and filed on 22<sup>nd</sup> March 2013 was brought under the provisions of the Judicature Act Cap 8, Laws of Kenya, The High Court Practice and Procedure Rules (Part 1 and 3), Order 20, Order 40 Rule 1 (a), Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act Cap 21 and all the enabling provisions of the law.
2. The said application sought injunctive orders against the Defendants from carrying away, advertising, transferring, conferring title, selling by public auction or in any other manner disposing of the Plaintiff's machinery and office equipment pending the hearing of the application and of the suit. It also sought orders that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's do provide the Plaintiff with proper and correct accounts of all the rents paid up to the time the said application was filed.
3. The Plaintiff which was also dated and filed on the same date sought the following prayers:-
  - i. **An order for temporary injunction restraining the Defendant's and/or their servants, agents, servants, employees, workmen or any person working under their instructions from transferring, conferring title, selling by public auction or in any other manner disposing of the Plaintiff's machinery and office equipment pending the hearing and determination of the suit or further orders of the court.**
  - ii. **An order that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents do provide proper and correct accounts of all the rents paid up to date.**
  - iii. **An order that the commencement date of the lease for shop No 9 was July 2012.**
  - iv. **Loss and damages.**
  - v. **Costs of the suit.**
  - vi. **Any other relief the Honourable Court would deem fit to grant.**
4. The application herein was brought under certificate of urgency and on 25<sup>th</sup> March 2013, Havelock J gave the following orders:-

- a. **THAT the application be certified as urgent.**
  - b. **THAT an order of temporary injunction be and is hereby granted restraining the Defendant's and/or their servants, agents, servants, employees, workmen or any person working for or under their instructions from carrying away, advertising, transferring, conferring title, selling by public auction or in any other manner disposing of the Plaintiff's machinery and office equipment pending the inter partes hearing.**
  - c. **THAT *inter partes* hearing of the application would be on 8<sup>th</sup> April 2013 before any judge in the Commercial Division of the Court.**
  - d. **THAT costs be reserved.**
5. The matter was allocated to this court and on 29<sup>th</sup> May 2013, counsel for both the Plaintiff and the Defendants requested the court to deliver its ruling based on the written submissions which were duly filed by both parties.
  6. They relied on Order 51 Rule 16 of the Civil Procedure Rules, 2010 ( of the laws of Kenya) which provides as follows:-

**“The Court may, in its discretion, limit the time for oral submissions by the parties or their advocates or allow written submissions.”**

7. The court allowed the counsels' application and directed that the ruling based on the said written submissions, would be delivered on notice.
8. At the time of the ruling, it emerged that this is not a matter that should have been filed in the Commercial and Admiralty Division in view of the subject matter and the value of the subject matter. The distress for rent was for a sum of Kshs 1,478,904.90. It is not clear to the court why the Plaintiff filed the suit in the High Court when the pecuniary jurisdiction of the Chief Magistrate's Court is Kshs 7,000,000/=. The Defendants did not also object to the suit having been filed at the High Court or bring the said issue to the attention of the court. In addition, the subject matter did not appear to have any commercial element to warrant the same to be filed in the Commercial and Admiralty Division.
9. While this court recognises that it has original and appellate jurisdiction to hear all matters and in particular, this matter, it strongly feels that matters should be filed in the correct courts. There is no other evidence placed before the court to suggest that the Plaintiff is claiming additional monies to justify this matter remaining in the High Court for hearing and determination of the same. This court finds that this matter should be heard and determined by the subordinate court which has a pecuniary jurisdiction of Kshs 7,000,000/=.
10. The basis of the court's holding is Section 11 of the Civil Procedure Act which provides as follows:-

**“Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts:**

**Provided that -**

**(i) if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court; and**

**(ii) nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same district.**

11. In addition, Section 18 of the said Act further provides that:-

**“(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage -**

**(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or**

**(b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter-**

**(i) try or dispose of the same; or**

**(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or**

**(iii) retransfer the same for trial or disposal to the court from which it was withdrawn.**

**(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.**

12. Further to the above, 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. **The place of suing is to be determined in accordance with the provisions of Section 11 and 18 of the Civil Procedure Act and not according to the preference or convenience of the plaintiff...**
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.**

13. Consequently, in view of the fact that there is a court of lower pecuniary jurisdiction which can hear and determine this matter as provided for in Section 11 of the Act and the fact that the High Court has power to transfer this suit to the subordinate court under Section 18 (1) (a) of the said Act, the court is not persuaded to make substantive orders as sought in the Plaintiff’s application as that should be done by the appropriate court.

14. The upshot of this court’s ruling is that this matter is hereby transferred to the Chief Magistrate’s Court, Milimani Commercial Courts, Nairobi which is competent to try and dispose of the same. It is hereby directed that the file be placed before the Chief Magistrate’s Court Milimani Commercial Court on 3<sup>rd</sup> September 2013 for his further orders and/or directions. In the meantime, the interim orders are hereby extended to that date.

15. Orders accordingly.

**DATED and DELIVERED at NAIROBI this 30<sup>th</sup> day of August 2013**

**J. KAMAU**

**JUDGE**