



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 589 of 2012

POWER SOLUTIONS LIMITED.....PLAINTIFF

- VERSUS -

CMA CGM KENYA LIMITED1ST DEFENDANT

AWANAD ENTERPRISES LIMITED.....2ND DEFENDANT

KENYA PORTS AUTHORITY3RD DEFENDANT

RULING

1. This is a ruling on an application by the 2nd Defendant dated 9th October, 2012 for the transfer of this suit from this Court to the Mombasa High Court Registry for hearing and determination. The application was supported by the Affidavit of Wilfred Oluga sworn on 9th October, 2012.
2. The 2nd Defendant contended that all the Defendants have their offices and carry on their businesses at Mombasa, that the subject matter of the suit is five (5) containers lying at the 2nd Defendant’s Container Freight Station in Mombasa and that the causes of action arose in Mombasa. The 2nd Defendant contended therefore that for the foregoing reasons, this suit should have been instituted in Mombasa and not Nairobi and that the 2nd Defendant was finding it rather expensive to have to defend the suit in Nairobi.
3. Mr. Omuga, learned Counsel for the 2nd Defendant reiterated the averments in the Supporting Affidavit and submitted that paragraph 20 of the Plaintiff had lied that the cause of action arose within the jurisdiction of this Court and that the filing of the suit in this Court was in breach of the provisions of Sections 12 and 15 of the Civil Procedure Act. Therefore Counsel urged that the application be allowed.
4. In opposition, the Plaintiff filed Grounds of Opposition dated 12th October, 2012. The Plaintiff contended that the application was premature, vexatious and an abuse of the Court process, that the same was meant to scuttle the hearing and speedy conclusion of the Plaintiff’s application dated 7th September, 2012 and was therefore against the overriding objective of the law and that the Court had already given directions on the hearing of the Plaintiff’s said application.
5. Mr. Ndegwa, learned Counsel for the Plaintiff submitted that the law allows an aggrieved party to go to the nearest court, that the matter had already been adjudicated by three (3) courts, that there was no difficulty at all in the 2nd Defendant defending this suit in Nairobi and that since all the parties had entered appearance, prayer No. 2 of the Plaintiff could be determined at once in consonance with the overriding objective of the law. Counsel therefore urged that the application be dismissed.

6. I have considered the Affidavit on record and Counsel's submissions. To begin with, I do not agree with Mr. Omuga that paragraph 20 of the Plaintiff is false. That paragraph pleaded that the cause of action arose within the jurisdiction of this court. There is nothing false about that fact in my view since the High Court has national jurisdiction. However, the High Court has various registries which have been established at various stations for the convenience of the consumers of justice in this country.

7. Mr. Ndegwa for the Plaintiff submitted that an aggrieved party is required to go to the nearest court and that this matter had been adjudicated now by three (3) courts and therefore it was inadvisable to transfer the same to Mombasa as sought by the 2nd Defendant. I partially agree with Mr. Ndegwa. A party is required to go to the nearest Court where a wrong has been committed and or where the cause of action has arisen. Our Civil Procedure Act has provided in detail from Section 12 through 17 on the place of suing. The law seems to have emphasized the place of suing to be the nearest Court where the cause of action has arisen or within the jurisdiction of the Defendant. It is true that this matter has been adjudicated upon by two (2) previous courts and orders granted but as at that time the issue of jurisdiction i.e. proper place for adjudication, had not been raised. Since the same has now been raised, the same has to be determined.

8. One of the issues to be considered in matters of litigation is the convenience of the parties, their witnesses and the costs involved. I believe this is why the legislature went into detail in Sections 12 to 15 of the Civil Procedure Act as to where certain suits have to be filed. Litigation is supposed to be affordable. This is why Court Registries have been established in various stations in this country. To bypass those registries for no good reason and file a suit in a far away station in my view would not be just to the other parties concerned.

9. In the case before me, it has been sworn that the cause of action arose in Mombasa, all the Defendants carry on their businesses at Mombasa and that the goods, the subject matter of the suit, are lying at Mombasa. These facts have not been denied. In my view therefore, it is most likely than not that the Defendants witnesses would have to travel from Mombasa to Nairobi at the hearing of the suit. Would that not be expensive? I think so. Indeed the 2nd Defendant swore that it was getting it expensive and difficult to defend the suit at Nairobi.

10. Taking into consideration the circumstances of this suit and the undisputed facts in the Affidavit of Wilfred Oluga, I am satisfied that the proper place of suing in this matter should have been in Mombasa. It will be expensive for the parties to litigate this matter in Nairobi. The overriding objective of the law is that litigation be conducted expeditiously and proportionately. I do not think that having witnesses to travel from Mombasa to attend Court at Nairobi will be expeditious or proportionate. I am therefore satisfied that the application has merit and I allow the same and order that this file be transmitted to the High Court Mombasa Registry for hearing and determination of the suit. I will award the costs of the application to the 2nd Defendant.

DATED and DELIVERED at Nairobi this 9th day of November, 2012.

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A. MABEYA
JUDGE