



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO. 167A OF 2008

(Being an appeal from the Ruling of the Resident Magistrate's Court at Nakuru, Hon. C. A. Otieno, dated 17th November, 2008 in CMCC No. 1473 of 2005)

RESMA COMMERCIAL AGENCIES.....APPELLANT
VERSUS
DANIEL MACUA NDONGA.....RESPONDENT

JUDGMENT

The sole issue raised in the appeal dated and filed in July 2010 is whether the lower court had jurisdiction to entertain an application to amend the Plaintiff as contended by the Respondent. The Appellants contended otherwise.

Section 5(1) of the Magistrate's Court Act, (*Cap. 10, Laws of Kenya*) sets out the jurisdiction of Magistrates Courts in proceedings of a civil nature subject to the monetary sums therein, with power for the Chief Justice to increase the jurisdiction of the Chief Magistrate, the Senior Principal Magistrate, the Principal Magistrate, the Senior Resident Magistrate and the Resident Magistrate to the limits prescribed.

At the time of the proceedings, the subject of the appeal, the jurisdiction of a Resident Magistrate in proceedings of a civil nature was prescribed at Shs 500,000/=. The subject matter of the proceedings was Shs 926,000/= and clearly beyond the jurisdiction of the court of the Resident Magistrate.

Mr. Macua Ndonga learned counsel for the Respondent has argued in his submissions dated and filed in court on 17th May 2011 that since the learned Resident Magistrate was merely considering an application for amendment of the Plaintiff, and not determining the claim, it was within her court's jurisdiction to do so. With respect to counsel, I do not subscribe to that view of the matter.

Neither the Constitution, the Magistrates Courts Act, the Judicature Act, or the Civil Procedure Act defines "**jurisdiction**". The Old Shorter Oxford English Dictionary (1959, *Edn*) defines "**jurisdiction**" as "**legal authority or power.**" Authors of **Words and Phrases (Legally defined)**, 1969 *Edn. p. 113*, say -

"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it, or to take cognizance of matters presented in a final way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no limitation is imposed, the jurisdiction is said to be unlimited. The limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it

may partake of both these characters ...".

And again, Halbury's Laws of England, 3rd Edn. Vol 9, p. 350, at says -

"... where a court takes upon itself to exercise a jurisdiction which it does not possess its decision amounts to nothing. Jurisdiction must be acquired before judgment is given ...".

In the case of **ANISMINIC LTD. VS. FOREIGN COMPENSATION COMMISSION [1967]2 ALL E.R. 986**, C.A. Diplock L.J. at p. 994 said -

"Jurisdiction" is an expression which is used in a variety of senses and takes its colour from its context. In the present appeal ... we are concerned only with the statutory jurisdiction in the sense of an authority conferred by statute on a person to determine, after inquiry into a case of a kind described in the statute conferring that authority and submitted to him for decision, whether or not there exists a situation of a kind described in the statute, the existence of which is a condition precedent to a right or liability of an individual who is party to the inquiry, to which effect will, or may be given by the executive branch of government."

It is thus clear from the above definitions and discussion on jurisdiction that that authority or power is, or may be circumscribed. Where it is not so circumscribed or restricted it is said to be unlimited like the jurisdiction of the High Court in civil and criminal matters is said to be unlimited (S.165(3)(a)) of the Constitution, except on matters reserved to the jurisdiction of the Supreme Court and/or other specialist courts (S. 165(5)(a)&(b)) of the Constitution.

In the matter at hand, the Section 5 of the Magistrates Courts Act clearly restricts the jurisdiction of the Resident Magistrate's Court to a specific monetary value shillings five hundred thousand. This was clearly brought to the court's attention by Mr. Mukiri, counsel then holding brief for Mr. Mbeche, counsel for the Appellant.

Jurisdiction is everything, once it is raised, the court's antennae, its mind, and ears must be tuned to the issue and make inquiry into it. It cannot be ignored. If it is ignored and the court to which the resultant decision is appealed against, or is subjected to inquiry by way of judicial review, and, it is established that there was no jurisdiction, that decision will count for nothing. It will be quashed by an order of certiorari, in the case of judicial review, and it will be set aside in the case of an appeal.

It counts for nothing (*as counsel for the respondent argued*), to argue that it was merely an application for amendment. The fact of the law was that the learned Resident Magistrate's jurisdiction was limited to Ksh 500,000/=. That court had neither competence (*the other word for jurisdiction*) to deal with the application. Its Ruling of 17/01/2008 was consequently incompetent and counted for nought.

In the premises, the appeal is allowed, the Ruling of the learned Resident Magistrate is set aside, and I direct that unless the jurisdiction has been increased as appropriate, the matter be mentioned before the Chief Magistrate for allocation.

There shall be orders accordingly.

Dated, delivered and signed at Nakuru this 6th day of October 2011

M. J. ANYARA EMUKULE
JUDGE