



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 87 of 2010

PRECIOUS GEMS LTD.....PLAINTIFF

VERSUS

MOTEMPA SUAKEI SITEYIA.....DEFENDANT

**RULING**

1. The amended Chamber Summons was filed on the 17<sup>th</sup> February 2010. Apparently this matter was filed before the Chief Magistrate's Court on 2<sup>nd</sup> February 2010 and a similar application was made therein. There are orders by Senior Principal Magistrate certifying the matter urgent and ordering the application be served for inter- parties hearing on 11<sup>th</sup> February 2010. Apparently this is the same application which counsel for the plaintiff presented before the High Court except he made an amendment on the heading.

2. When this amended chamber summons came up for hearing before me, a preliminary objection on a point of law was raised by counsel for the defendants on the grounds that under sections 159 of the Registered Lands Act, this matter involves a title to land. It therefore ought to have been filed in the High Court in the first place, because the value of the subject matter is indicated as over 2 million. It was submitted that it is trite law that disputes relating to title, possession and registration of an interest in land which land is worth over Ksh 500,000/= the jurisdiction vests in the High Court. This suit was filled in the wrong court which had no jurisdiction, it follows therefore there was no suit to transfer to the High court and there is no suit capable of determination.

3. Counsel further cited the case of; **Kagenyi vs. Musiramo & Another (1968) EALR the High Court of Uganda as per Sir Udo Udoma CJ** held that :

***“(I) section 18 of the Civil Procedure Act gives a general power of transfer of all suits, which may be exercised at any stage of the proceedings even suo moto by the court without application by any party;***

***(ii) An order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first instance brought to a court which has jurisdiction to try it.***

***(iii) The subject matter of the application on the admission and showing of the applicant had been instituted in a court without jurisdiction and it was therefore incompetent for the case to be transferred to the High court for hearing and determination.”***

Since the matter was filed in a court without jurisdiction there is no suit to transfer to the High Court for

hearing. The suit is therefore a nullity and should be struck out in its entirety.

4. Counsel for the plaintiff opposed this preliminary objection. He admitted that the suit was originally filed before the Chief Magistrate's Court. When the suit was instituted, the basic document that counsel relied on was an agreement for sale which indicated the purchase price as 2.5 million but later counsel realized there were certain prayers which could not be sought in the Chief Magistrate's Court and therefore amended the plaint which was transferred to the High Court. He relied on the provisions of Section **60 of the Constitution of Kenya** which gives the High Court unlimited jurisdiction to determine all matters. He went on to argue that procedural technicalities should not hinder the administration of justice for reasons that if the suit is struck out, the plaintiff will suffer prejudice but if the suit is sustained, both parties will have an opportunity to ventilate their arguments. He urged the counsel to excuse the mistake of counsel in filing the suit before the Chief Magistrates Court.

5. The dispute in this matter is in respect of a parcel of land known as **KAJIADO/KITENGELA/27155**. The Chief Justice has routinely provided Practice Directives by listing the Courts and the areas covered by each High Court. A matter falling within **Kajiado** should be filed before Kajiado Magistrate's Court or High Court Machakos. Moreover land matters within Nairobi should be filed before The Land and Environmental Division of the High Court Nairobi. These Practice directives are meant to clarify the provisions of the civil procedure Act and ensure a predictable system of administration of justice that is proportionate and provides accessibility of the courts depending on the location of the parties. Under section 18 of the Civil Procedure Act, the High Court is given powers to transfer a suit instituted in the Subordinate Court to another Court for trial and determination. Sections 11 and 12 of the civil procedure Act, provides where a suit should be filed.

6. Apart from failing to observe the provisions of sections 11 and 12 of the Civil Procedure Act, and the practice directives, it is also evident that the plaintiff did not take into account the provisions of section 159 of the Registered Land Act when filing this suit before the Chief Magistrates' Court. That section provides as follows;

***“Civil suits and proceedings relating to the title to or the possession of, land, or to the title to a lease or a charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate's Court, or, where the dispute comes within the provisions of Part IIIA of the Magistrate's Courts Act, in accordance with that Part.”***

7. The plaintiff was aware of the value of the subject matter when the suit was instituted before the Chief Magistrate's Court because the value is indicated in the sale agreement. The mistake by counsel when he filed the suit before the Chief Magistrate is inexcusable, it is fundamental; it goes to the root of the matter, it is also an expensive mistake as counsel will have to file another suit. This is not a mistake that the Court can allow; as there was no suit before the Chief Magistrates Court. A suit filed in a court without jurisdiction is a non starter;

there is no valid suit before the court. As much as I sympathize with the counsel for the plaintiff, there was no suit before the Chief Magistrate's Court and it follows there is no suit before the High court. It can only be struck out for the plaintiff to file a fresh suit before of a Court with the requisite jurisdiction if it so wishes. Due to the nature of this matter I will award costs on the lower scale for this application since no defence had been filed.

**RULING READ AND SIGNED ON 18<sup>TH</sup> JUNE 2010 AT NAIROBI.**

**M.K. KOOME**  
**JUDGE**