



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA**

Civil Appeal 80 of 1998

MUMIAS AGRICULTURAL TRANSPORTERS LTD APPELLANT

VRS

PHILIP ONTITA..... RESPONDENT

JUDGMENT

The Appellant Mumias Agricultural Transporters Limited were aggrieved by the ruling of Bungoma Chief Magistrate, Jacob Ombonya made on the 4th day of December, 1998 where he ruled that, his court had jurisdiction to hear a matter where cause of action arose at Mumias.

The Respondent filed the suit in Bungoma CM. CC. No.642 of 1996 claiming general and special damages for injuries sustained by him in the course of his duty as an employee of the Appellant. The Appellant in its written statement of defence paragraph 3, denied that the Bungoma court had jurisdiction to hear the matter. Later the parties amended their pleadings which did not affect the issue of jurisdiction.

The grounds of appeal challenged the ruling of the lower court which failed to consider the legal provisions regarding territorial jurisdiction. The act of the magistrate was in effect conferring jurisdiction upon himself and failed to consider the issues raised in the objection made by the appellant.

The Appellant was represented by Mr. Khakula and the Respondent by Mrs. Change both in this court and in the lower court.

Mr. Khakula contended that the jurisdiction of courts is governed by section 15 of the Civil Procedure Rules which provides that a suit shall be instituted in a court within the local limits of whose jurisdiction the defendant(s) resides. The Appellant and Respondent resided at Mumias and the cause of action arose at Mumias. There is a court of competent jurisdiction at Mumias where the suit ought to have been filed.

Mr. Khakula relied on the case of MANANDU KITONGA –VRS- SALIM where the late Honourable Chief Justice Miller analysed the provisions of section 15 of the Civil Procedure Act and section 3 of the Magistrates Courts Act (Cap 10) the court in that case held that territorial jurisdiction as set out in section 15 was applicable. It was Mr. Khakula's submission that the ruling of the magistrate failed to deal with any of the issues raised since it had no reasoning to support it.

Mrs. Change for the Respondent opposed the application on three grounds. Firstly that the ruling

appealed against was not contained in the record of appeal rendering the record incomplete. Secondly, that the Mumias court had no pecuniary jurisdiction at the time the suit was filed. The counsel interpreted section 15 to mean that the Respondent was entitled to file the suit in the next nearest court since the Mumias court had no jurisdiction. According to her, the Respondent chose Bungoma being the nearest. She relied on Bungoma High Court CIVIL APPLICATION NO.13 OF 2002 MOHAMED SABAN VS MWANGI KAROKI where Justice Ringera ruled in an application with similar facts that section 3 of the Magistrates Courts Act gave jurisdiction to magistrates throughout Kenya on cases in which they had pecuniary jurisdiction. She urged the court to rely on the said authority and dismiss the appeal.

The grounds of the appeal are based on only the issue of jurisdiction of the Chief Magistrate in Bungoma court to hear a case where the cause of action arose at Mumias. The provisions relating to civil jurisdiction of magistrates are contained in both the Civil Procedure Act and the Magistrates Court Jurisdiction Act.

The relevant parts of section 15 provides as follows; “Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction:

- a) the Defendant or each of the Defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- c) the cause of action, wholly or in part, arises.

The section is clear that all civil matters shall be filed in court within the local limits where the Respondent’s resides or where the cause of action arose.

Section 3(2) of Cap 10 provides:

“The Resident Magistrate’s court shall have jurisdiction through out Kenya.”

The issue which arises is whether there is any conflict in the provisions of section 15 of the Civil Procedure Act and section 3(2) of Cap 10. In my considered opinion, there is no conflict. Section 3 (2) is a general provision regarding all Resident Magistrates’ Courts. The term “*Resident Magistrate Court*” is defined in the interpretation section as the court established by section 3. Section 3(1) refers to a Chief Magistrate, Senior Principal Magistrate, Principal Magistrate, Senior Resident Magistrate and Resident Magistrate.

With all the categories included, section 3 was not intended to confer any territorial or pecuniary jurisdiction to those magistrates. Pecuniary jurisdiction is covered by section 5 of the Act while territorial jurisdiction is provided for by section 15 of the Civil Procedure Act.

For a magistrate to decide whether he/she has territorial jurisdiction, section 15 of the Civil Procedure Act must apply. It is the governing statutory provision on territorial jurisdiction. In the case relied on by the Appellant, the late Honourable Justice Miller

(as he then was) analysed the implication of the provisions of section 15 of the Civil Procedure Act correctly. He did the same for section 3(2) of Cap 10 when he said that the intention was to avoid the problem of gazetting different categories of magistrates whenever they were transferred from one station to another.

I have perused the authority of Justice Ringera relied on by the Respondent. The decision disregards the provisions of section 15 of the Civil Procedure Act on territorial jurisdiction and dwells only on section 3(2) of Cap 10. In my opinion this was a narrow and wrong interpretation.

On the issue of the ruling of the lower court missing from the court record, Mr. Khakula urged the court to look at the original record. I have looked at the original record which is legible. I am of the

opinion that this anomaly cannot affect the validity of the appeal. The original file also contains a typed ruling which is not certified. The ruling of the magistrate reads as follows:

“ This court has territorial peculiarly the claim that the cause of action arose at Mumias and so the suit be heard at Mumias is immaterial. This court deals with many cases arising at Mumias and this one is not an exception. The objection is dismissed.”

The ruling does not analyse the relevant provisions of the law. Neither does it consider the authority relied on by the Plaintiff’s advocate. It does not say whether the magistrate agrees with the authority or not. No reasons are given for the decision contained in the ruling.

A ruling like a judgment must contain the decision and the reasons thereof. It was wrong for the magistrate not to give reasons for his decision.

It is my finding that, the lower court erred in finding that it had jurisdiction in the case before it in total disregard of the provisions of section 15 of the Civil Procedure Act. The parties were residing at Mumias at the material time and the cause of action arose at Mumias. The counsel for the Respondent raised the issue of lack of pecuniary jurisdiction by the magistrate at Mumias court. At the time of filing the suit [1996], Mumias was in Kakamega District. Territorial jurisdiction is based on the premise that the nearest court has no jurisdiction, then the suit ought to be filed in a court of competent jurisdiction within the same geographical jurisdiction. The case at hand ought to have been filed at Kakamega Magistrate’s court which I suppose was senior to Mumias and had both pecuniary and territorial jurisdiction. Bungoma was in a different district and geographical area and it was therefore the wrong place to file the case. The fact that it may have been nearer to Mumias than Kakamega did not give the Appellant the licence to file the suit there.

Section 15 of the Civil Procedure Act was meant to guard parties from shopping for courts of their own choice to hear their matters which if allowed would result to a lot of disorder.

I therefore find that, the appeal before me is merited. I set aside the ruling of the lower court delivered on 4/12/1998 and order that the Plaintiff’s suit SPM CC No.642 of 1996 be and is hereby struck out with costs for lack of jurisdiction. Each party to meet their own costs of this appeal.

Dated, Delivered and Signed at Bungoma this 9th day of June 2009.

F. N. MUCHEMI

JUDGE