



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

Misc Appli 230 Of 2005

HUMPHREY OURE APPLICANT

VERSUS

AFYA CO-OP SAVINGS & CREDIT SOCIETY LTD RESPONDENT

RULING

This is a notice of motion under Section 17 and 18 of the Civil Procedure Act seeking the transfer of Tribunal Case No. 130/2004 in the Co-operative Tribunal at Nairobi to the

Co-operative Tribunal at Kisumu for hearing and determination.

The application is grounded that:

- 1) **There is an operational registry of the Co-operative Tribunal in Kisumu.**
- 2) **The alleged cause of action arose in Kisumu within the jurisdiction of the said registry.**
- 3) **Most of the defendants reside in and around or near Kisumu.**
- 4) **Most witnesses hail from within or about Kisumu District.**
- 5) **In order to cut down on costs and expenses, it is reasonable to have the claim/suit tried in Kisumu.**
- 6) **The respondent does not stand to suffer any loss or prejudice should the orders prayed for be granted.**
- 7) **The filing of the claim/suit in Nairobi is unjustifiable, is oppressive and otherwise an abuse of the process of the Court.**

It is the contention of the applicant that the cause of action arose in Kisumu and the subject matter is based in Kisumu. It is also contended that the defendant is based in Kisumu. Mr. Onsongo Advocate relied on Section 17 and 18 of the Civil Procedure Act. I must state from outset that Section 17 and 18 of the Civil Procedure Act has no relevance to the present application. The High Court has powers to transfer or direct the transfer of a particular matter before a subordinate Court. In my humble view the definition of a suit, which means all Civil Proceedings commenced in any manner prescribed, cannot

apply to matters before a tribunal, because the High Court can only transfer a suit pending before a subordinate Court to another Court after considering the objections by the parties.

Section 2 of the Civil Procedure Act defines Court:

"Means the High Court or a subordinate court acting in the exercise of its Civil jurisdiction. And according to the interpretation and General Provisions Act Cap. 2

Subordinate Court Means:

"a magistrate's Court within the meaning of the magistrate's Courts Act and a reference to a subordinate Court of a particular class means a magistrate's Court of that class, within the meaning of that Act."

In most cases tribunals do not operate within the Civil Procedure, while the Court is mandated to follow the rules as contained in the civil procedures Act and Rules and as ordinarily guided by the evidence Act. The tribunals usually makes subsidiary, rules for the operation of the particular circumstances mandated to be performed. In my view a tribunal cannot be termed as a **Court having a competent jurisdiction** but it has cognizable authority of a particular designated matter specified by an appointing authority or an act of parliament. The powers conferred to a tribunal is for a particular subject, may be like in this case co-operative issues as specified by Act No. 12/1997.

A subordinate Court has pecuniary, geographical and other limitations as may be prescribed by the law, while a tribunal has no such restrictions. A tribunal can regulate the mode and place of its sitting, therefore the High Court cannot by an application made under Section 17 and 18 of the Civil Procedure Act direct the co-operative tribunal on where to deal in a matter before it. The High Court can determine the manner of a particular transaction by the co-operative tribunal but cannot regulate its procedures provided no law is violated by the action or decision of the tribunal. The High Court cannot in my view dictate the venue or place of the tribunal sittings by way of an application under Section 17 and 18 of the Civil Procedure Act. The purpose of Section 17 and 18 is only to transfer a suit pending before a competent Court subordinate to the High Court. I must confess that a tribunal is substantially subordinate to the High Court but it is not a subordinate Court for purposes of Section 2 of the Civil Procedure Act. And in any case a tribunal is not a Court within the meaning of Section 2 of the Civil Procedures Act. The tribunal has unlimited geographical and pecuniary jurisdiction in matters of co-operative disputes, therefore has powers to direct where a particular matter or proceedings shall proceed or be heard.

Section 78 (3) of Act 12/1997 states

"The tribunal shall sit at such times and in such places as it may decide."

It is outside the powers of the High Court to determine where a competent tribunal would conduct its proceedings. That would amount to interfering in the kitchen affairs of the tribunal without sufficient cause. It is true that the High Court has supervisory jurisdiction over all quasi judicial institutions but the powers of the High Court can only be exercised:

- 1) **By way of an appeal as provided for under Section 81 of Act No. 12 of 1997 and:**
- 2) **By way of judicial review where necessary.**

It is within the powers of the tribunal to determine the rights and interest of the parties with regard to its jurisdiction, especially where or the place to conduct a particular matter before it for determination. There is nothing that restricts the tribunal from conducting its proceedings in this particular matter in Kisumu upon sufficient reasons provided by the present applicant. As matters stand and in view of the application before me, I cannot direct the distribution of the matters for determination or operation of the tribunal in a particular manner. It is within the tribunal's mandate to direct its place of sitting and time of conducting its business. The relief's sought by the applicant are not obtainable under my jurisdiction as invoked by the applicant.

Lastly I must deprecate the statement by Mr. Kopot that the tribunal has concurrent jurisdiction to that of the High Court. The tribunal does not have a competent concurrent jurisdiction as that of the High Court but is subject to the supervisory jurisdiction of the High Court. Equally it is a misdirection to term the co-operative tribunal as fellow High Court with concurrent jurisdiction, such is a remarkable misapprehension of the jurisdiction of the High Court.

The tribunal is a creation of the co-operative Act and its lifespan is defined, with limited or restricted jurisdiction. And to compare it to the High Court would be a complete departure from constitutional authority of the High Court. The tribunal cannot by any means have a competent jurisdiction to that of the High Court of Kenya. The powers of the High Court is exercised in conformity with the constitution and all other written laws including the co-operative Act No. 12/97. Such powers includes the regulation of the operation of the tribunal and whether it has observed the due process of justice and rules of natural justice. If the decision of the tribunal is appealable to the High Court, then a body whose decisions can be overturned or set side cannot be said to have concurrent jurisdiction to that of the High Court of Kenya.

In the premises the application is dismissed with costs to the respondent.

Dated and Delivered at Kisumu this 1st day of February, 2006.

M. WARSAME

JUDGE

MW/mo