



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Suit 2 of 2006

RIFT VALLEY BOTTLERS CO. LTD1ST PLAINTIFF

PAUL MATELONG 2ND PLAINTIFF

VERSUS

EMIRATES AIRLINES DEFENDANT

RULING

Section 15 (a) and (c) of the Civil Procedure Act ('the Act') stipulates that:

“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.”

Emirates Airlines, which relies on above provisions of the law, seeks an order to have this suit transferred to the Principal Magistrate’s Court at Milimani, in Nairobi for hearing and final determination.

It bases it’s application on several grounds, but mainly that it’s principal office in Kenya is in Nairobi, that the transaction which gave rise to this claim took place in Nairobi, that all its witnesses are based in Nairobi, and that the Principal Magistrate’s Court in Nairobi which has the relevant pecuniary jurisdiction, would be able to handle the claim comfortably.

It was also the submission of Mr. Wasonga, learned counsel for Emirates Airlines, which I shall now refer to as “the applicant”, that his client’s offices in Kenya are only situated in Nairobi, that the subject contract was made in Nairobi, from where the plaintiffs purchased the ticket, and also from where the 2nd plaintiff was to be airlifted from and where he was to be returned at the end of his journey.

Mr. Shivaji, who appears for the plaintiffs, was however of the view that the High Court has unlimited original jurisdiction throughout Kenya, and in this connection he relied on Riddlesbarger & another v. Robson and others [1958] E.A. 375 where the court held that “*section 15 of the Civil Procedure Ordinance applies only to Subordinate Courts*” and that in the circumstances, the said section would not aid the applicant.

Mr. Shivaji also alluded to the fact that apart from the prayer for special damages, his clients intend to seek many other claims whose total sum would ultimately exceed the pecuniary jurisdiction of a subordinate court, which in my cannot lie for a party is bound to disclose all his prayers in the pleadings. The court cannot deal with undisclosed issues.

I have taken the submissions of both counsel into account and I have also perused the pleadings on record. It is evident that by the time when the aforementioned judgment was delivered, there was only one Supreme Court of Kenya. Since then, several changes have taken place, one of which is that the Supreme Court which is no longer and which is now the High Court of Kenya as established under section 60 of the Constitution is the superior court of records with unlimited jurisdiction and with supervisory powers over subordinate courts. The High Court has the Central Registry as well as several District Registries most of which were established under Order XLV of the Civil Procedure Rules, vide Legal Notice number 11 of 1975. It is for a party to choose where to institute his suit, and in this connection Order XLVI (1) of the Civil Procedure Rules comes into play, for it provides that “*Every suit in the High Court may be instituted at the Central Office of that court situate in Nairobi or in a District Registry*”. The District Registries are shown in the schedule to sub-rule (1) of rule 2 thereof.

The issue which also arises is whether section 15 aforementioned applies to the High Court.

I have had to establish which is the “*court*” that is referred to in section 15 of the Civil Procedure Act (CPA), for which reason I have had to revert to Section 2 of the Act, which is the interpretation section thereof and where “*court*” means “the High Court or a Subordinate Court acting in the exercise of its civil jurisdiction.” Based on the above, I have no doubt in my mind that the said section 15 applies to both the High Court and the Subordinate Courts and Mr. Shivaji’s submission cannot lie.

In view of the fact that the pleadings are clear, I feel that Milimani has the relevant pecuniary jurisdiction to handle this matter and I do transfer the suit to that Court for hearing and final determination.

Dated and delivered at Eldoret this 10th day of July 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Igosi for the plaintiff/respondent

No appearance for the applicants