

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS
REVISION CASE 1 OF 2005

LOTU MUTHWI MULI PLAINTIFF

VERSUS

GERMANY AGRO ACTION DEFENDANT

R U L I N G

The above suit was originally filed at Kitui as Kitui PMCC No. 260 of 2002. A preliminary objection that the suit had been filed in court without proper geographical jurisdiction was raised, argued and finally accepted by Kitui Principal Magistrate's Court who pointed out the courts which in his opinion, had geographical jurisdiction. Instead of dismissing the suit, the Principal Magistrate who heard the preliminary objection, ordered the plaint to be returned to the plaintiff with a notification thereon of the court fees which had been paid to file the suit at Kitui Law Courts. This notification as I understand it, was intended to assist the plaintiff when he would present the plaint at any other court registry of any of the other courts having the geographical jurisdiction aforementioned, so that he would not be required to pay court fees, the second time, for the same suit.

As I understand from the information from the records, the defendant did not appeal against this decision whose effect was to withdraw the suit from that court and terminate it altogether. On 10/5/05, when the Senior Resident Magistrate E.K. Makori made another order, effectively repeating what the Principal Magistrate M.N. Gicheru had done on 5/3/04, he was in my opinion and decision, merely clarifying the earlier order. Indeed his act was not even judicial. It was administrative, effectively executing the earlier order. In my further view, Kitui PMCC No. 260 of 2002 ceased to exist on 5/3/04, when M.N. Gicheru, P.M. ordered the return of the plaint.

In my further understanding also, the suit Kitui PMCC No. 260 of 2002, while it existed before 5/3/2002, was a substantive suit, filed in inappropriate court because of the geographical jurisdiction. It only needed to be lawfully transferred to the geographically appropriate court by the High Court acting in an application filed by either party seeking such transfer, or acting on its own motion under Section 18 of Civil Procedure Act.

I do not therefore agree with any view to the effect that the Senior Resident Magistrate, who had no jurisdiction, transferred the suit to Machakos Chief Magistrate's Court. This is because, as earlier stated, the suit did not at that moment in time exist, the same having been withdrawn when the plaint was ordered returned on 5/3/02. Furthermore, when the plaintiff filed his returned plaint at Machakos Law Court as CMCC No. 374 of 2005, he was filing a fresh suit except that he was excused from paying filing fees a second time, having paid it through Kitui vide Kitui receipt No. M100870 for Kshs.2,135/=.

In conclusion therefore, even if the order 10/5/05, by Kitui Senior Resident Magistrate was probably made ex parte, the same had no legal effect, was only administrative or executive of the earlier order, and did not prejudice the defendant in particular. I accordingly hold that Messrs Mereka & Co. Advocate's complaint in their letter to the Executive Officer, Machakos Law Courts, has no merit. I further hold that Machakos CMCC No. 374 of 2005 was properly filed and should proceed in accordance with the law. It is so ordered.

Dated at Machakos on 26th day of October, 2005.

D.A. ONYANCHA

JUDGE