



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

**Civil Appeal 50 of 2001**

**JOHN MARAKA WEKESA.....APPELLANT**

**VS**

**PATRICK WAFULA OTUNGA.....RESPONDENT**

**JUDGMENT**

John Maraka Wekesa , the appellant, was charged with the offence of obtaining money by false pretences before Butali Resident magistrate’s court on the instigation of Patric Wafula Otunga, the Respondent. He was however acquitted of the offence under section 210 of the Criminal Procedure Code. He then filed a plaint at the Resident Magistrate’s Court at Webuye seeking for damages for malicious prosecution as against Patrick Wafula Otunga. The respondent entered appearance and filed a defence denying the appellant’s claim. The Respondent in his defence denied jurisdiction of the Webuye Resident Magistrate’s Court to hear and determine the dispute.

In a preliminary objection dated 29<sup>th</sup> May 2001 the Respondent applied for the action to be dismissed on the ground that the Webuye Resident Magistrate’s Court lacked territorial jurisdiction to hear and determine the matter. The preliminary objection was argued on 8<sup>th</sup> June 2001 and on the 13<sup>th</sup> day of July 2001 the learned Senior Resident Magistrate upheld the preliminary objection by striking out the plaint. Being dissatisfied, the appellant preferred this appeal.

When this appeal came up for hearing the Respondent failed to attend court, consequently the appellant was granted leave to proceed for hearing *ex parte*.

On appeal Mrs. Mumalasi advocate for the appellant argued one main ground on appeal to the effect that the learned Senior Resident Magistrate erred when she failed to appreciate that section 3(2) of the magistrate’s Court Act gave the Resident Magistrate’s country wide jurisdiction.

The record shows that the learned Senior resident Magistrate struck out the plaint on the basis that the Webuye Court had no territorial jurisdiction. She was of the view that the appellant should have filed the action in any of the courts within Kakamega District. I have anxiously considered this matter. Section 3 (2) of the magistrates Courts Act provides as follows:

*“The Resident magistrate’s Court shall have jurisdiction throughout Kenya.”*

However section 15 of the Civil Procedure Act decrees inter alia that suits shall be instituted in a Court within local limits. I do not think section 15 of the Civil Procedure Act was meant to apply to Resident Magistrate’s Courts. Most probably it was intended to apply to District magistrate’s courts defined under section 6 of the magistrates’ Courts Act. Even if it were to be said that the Provisions of section 15 were to apply to the Resident magistrate’s Court, the position in my view will not change because the law is well settled that where there is a conflict of between two statutes the provision in the latter statute would be deemed to have amended the earlier provision. The magistrates Courts Act was enacted later than the Civil Procedure Act. It is therefore evidently clear that the Webuye Court had jurisdiction to entertain the suit. The learned senior Resident magistrate therefore misapprehended the point when she held that she had no territorial jurisdiction to hear the matter. For the above reasons the appeal must succeed. Consequently the order striking out the plaint dated 13<sup>th</sup> July 2001 is set aside. The plaint is restored and remitted back to Webuye Resident Magistrate’s court for hearing and

determination. Costs of the appeal shall be met by the Respondent in any event.

**Dated and delivered this 16th day of November 2005.**

**J. K. SERGON**

JUDGE

In the presence of Mrs Mumalasi for the appellant.

NA for the Respondent.