

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS

civ case 683 of 99

NDIKI CRAFTS APPELLANTS

VERSUS

GERALD MAINA MWANGI & ANOTHER..... RESPONDENT

JUDGMENT.

December 15, 2000 T Mbaluto, Judge delivered the following ruling. Miss Mukuru for the defendant in this matter has raised a preliminary objection on the issue of jurisdiction. She contends that this court has no jurisdiction to hear the suit because the contract was made in New York, outside the jurisdiction of this suit.

In support of her objection Miss Mukuru submitted that the suit is based on a contract in which the offer was made and accepted in New York. Payment was also to be made in New York.

The plaintiff does not accept all those assertions. She claims that the goods comprising the basis of the contract were ordered in Kenya. Given the conflicting assertions made by the parties, it is obvious that there is no agreement regarding where the contract was made. The law as to preliminary objections was clearly stated in the now famous case of Mukisa Biscuits Co v West End Distributors Ltd (1969) E A p 701 where Sir Charles Newbold, P stated:-

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”

There is in this matter no agreement as to the basic facts of this case. The place where the contract was made is disputed and the point taken by Miss Mukuru clearly lacks merit. It is in my view solely intended to delay the plaintiff in the hearing of this suit. For those reasons, the preliminary objection is overruled with costs.