



**Swift Capital Limited v Omondi (Miscellaneous Civil Application
E214 of 2024) [2024] KEHC 5707 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5707 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E214 OF 2024**

RE ABURILI, J

MAY 22, 2024

BETWEEN

SWIFT CAPITAL LIMITED APPLICANT

AND

DENNIS OWUOR OMONDI RESPONDENT

RULING

1. The Applicant's application dated 6th May 2024 seeks orders for transfer of Kisumu Chief Magistrate Civil Case No. E017 of 2024 to Nairobi for hearing and determination and for stay of proceedings in the said suit pending hearing and determination of the application.
2. The grounds upon which the application is predicated are that the Respondent herein who is the Plaintiff in the lower court matter was advanced a loan by the Applicant herein on 25th October 2022, an amount of Kshs.1,050,000 and that in the loan agreement which was executed in Nairobi, the Respondent indicated that he had business located near JKIA in Nairobi.
3. That the Applicant is domiciled in Nairobi with no branches in Kisumu and that the Motor Vehicle KCD 655N which is security for the said loan was repossessed at Nairobi hence the suit ought to have been filed in Nairobi.
4. The application is supported by the affidavit sworn by Samson Jimmy Mwanyasi the director of the Applicant company, annexing copy of the contract SJM1 wherein the contract was made in Nairobi with the Respondent's residence being Imara Daima. The Applicant's location is also deposed to be in Nairobi.
5. It is deposed that the Respondent defaulted repaying the said loan and a demand was send to him but he neglected to pay hence the Applicant instructed auctioneers who repossessed the said Motor Vehicle at around Kitengela area with the help of the police from Buruburu Police Station.



6. That the Applicant was then served with orders from Kisumu Chief Magistrate's Court regarding the repossession and the Applicant has challenged jurisdiction of the court in Kisumu upon which the trial magistrate agreed but had no jurisdiction to transfer the suit to Nairobi hence this application for stay of the said proceedings and transfer of the suit to Nairobi.
7. The Respondent Dennis Owuor Omondi filed a replying affidavit denying the averments by the Applicant on jurisdiction and contending that the cause of action arose in Kisumu where the contract and payments were made and that the vehicle was in Nairobi with a care hirer when it was repossessed.
8. That the Applicant was in contempt of court orders for release of the subject Motor Vehicle.
9. The application was argued orally with counsel for the respective parties reiterating their clients' depositions.

Determination

10. I have considered the application, the grounds and supporting affidavit as well as the Replying affidavit and the brief oral submissions by counsel for the respective parties. The issue for determination is whether the orders sought by the Applicant are merited.
11. On the prayer for stay of proceedings, that was in the interim pending orders for transfer of the suit hence I need not belabour on the same as the hearing of the application has been fast-tracked by this court and therefore the issue of stay of proceedings is spent.
12. On whether Kisumu CMCC No. E017 of 2024 should be transferred to Nairobi or not, I have perused the contract for the loan advanced to the Respondent by the Applicant and indeed, it shows that the Applicant is domiciled in Nairobi and the agreement was made in Nairobi. The Respondent too indicated his residence as being Nairobi and his place of business as near JKIA.
13. There is therefore no basis for the Respondent to claim that the agreement was entered into in Kisumu. If the respondent chose to relocate to Kisumu, and repay the loan from Kisumu, that is in his discretion and the Applicant would have no control over where the Respondent chooses to live and repay the loan from.
14. In addition, despite the allegation that the car was on hire in Nairobi, when it was repossessed, that does not change the fact that it was repossessed from Nairobi hence the Respondent should have instituted suit in Nairobi where the contract was executed from and the vehicle repossessed, knowing very well that the Applicant has no branch office in Kisumu, which depositions have not been controverted.
15. Ordinarily, suits must be initiated where the cause of action arose unless there are compelling reasons not to do so.
16. Section 18 (1) (b) of the *Civil Procedure Act* provides that:
 - 18(1) On the application of the parties and after Notice to the parties and after hearing such of them as desire to be heard or if on its own motion without such Notice, the High Court may at any stage:
 - a.
 - b. Withdraw any suit or order any suit or other proceedings pending in any court subordinate to it and thereafter
 - i. Try or dispose of the same or



- ii. Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same.
17. The Section cited above vests this Court with unfettered powers to transfer any suit from one subordinate court to another subordinate court which has jurisdiction to hear and determine the matters in dispute. The section also permits the High Court to withdraw suit from the subordinate court and try it itself.
18. However, the matters or matters in dispute must have arisen at the place where the suit is being transferred to; the defendant must ordinarily be resident of or carries on business at the place where the suit is being transferred and that no prejudice would be suffered by the parties as a result of the intended transfer.
19. There must also be material evidence that the cause of action arose at the place where the suit is being transferred.
20. The issue between the parties in this application is that the Applicant says that the contract for loan advancement was made in Nairobi while the Respondent claims that it was in Kisumu.
21. Having examined copy of the contract in question, I have no doubt in my mind that the same was made in Nairobi which is the only place where the Applicant carries on its business. Therefore, there is no basis upon which the Respondent claims that the cause of action arose in Kisumu.
22. Section 15 of the *Civil Procedure Act* provides for place of suing as follows:
 - “ 15. Other suits to be instituted where defendant resides or cause of action arises
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
 - b. any 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, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or
 - c. the cause of action, wholly or in part, arises.”
23. The Respondent has not adduced any evidence to controvert the deposition that the loan contract was executed in Nairobi and that the Applicant is domiciled in Nairobi and had no branch in Kisumu.
24. That being the case, I am satisfied that the Applicant has made out a case for transfer of Kisumu Chief Magistrate Civil Case No. E017 of 2024 to Nairobi Chief Magistrate’s Court, the Civil Division, for hearing and determination.
25. I therefore order that Kisumu CMCC No. E017 of 2024 is hereby withdrawn from Kisumu Chief Magistrate’s Courts and is hereby transferred to Nairobi Chief Magistrate’s Court, Civil Division for hearing and final determination.



26. Each party to bear their own cost of this application.

27. This file is closed.

28. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 22ND DAY OF MAY, 2024

R. E. ABURILI

JUDGE

