



**Chirchir v Kilele (Miscellaneous Civil Application 14 of 2023)
[2023] KEHC 18823 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18823 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CIVIL APPLICATION 14 OF 2023**

JK SERGON, J

JUNE 15, 2023

BETWEEN

PAUL KIBIEGON CHIRCHIR APPLICANT

AND

ANN NAANYU KILELE RESPONDENT

RULING

1. The instant application is a notice of motion dated April 26, 2023 seeking the following orders;
 - i. Spent
 - ii. Spent
 - iii. That pending hearing and determination of this Application inter partes, an order do issue staying the proceedings in Nakuru Small Claims Court Claim E 182 of 2023.
 - iv. That the suit in Nakuru Small Claims Court Claim E 182 of 2023 be withdrawn from the Small Claims Court at Nakuru and be transferred to the Chief Magistrate’s Court at Kericho for hearing and determination.
 - v. That the costs of this Application be provided for.
2. The Application is supported by grounds on the face of it and the supporting affidavit of Paul Kibiego Chirchir the Applicant in the instant application and the Respondent in Nakuru Small Claims Court Claim No E182 of 2023, annexed hereto and marked “PKC-1” and “PKC-2” are copies of the statement of claim and the response to statement of claim respectively.
3. The Applicant avers that he ordinarily resides in Ainamoi Sub-County, Kapsoit Ward, Kericho County and works for gain in Kericho County as the Member of County Assembly of Kericho for Kapsoit Ward whereas the Respondent herein ordinarily resides in Nairobi County.



4. The Applicant avers that the cause of action and other events giving rise to the claim in the suit Nakuru Small Claims Court Claim No E 182 of 2023 took place in Kapsoit Shopping Center and Kericho Town where the parties met in several hotels and reached an agreement that the Claimant was to gift or donate certain amounts of monies toward his campaign as a Member of County Assembly of Kericho for Kapsoit Ward, which were not refundable and which she did, and the said monies were received by the applicant within Kapsoit Ward during the campaigns.
5. The Applicant further avers that all potential witnesses reside and work for gain in Kericho Town and have declined to be listed as such in Nakuru Small Claims Court Claim No E 182 of 2023 owing to their job engagements and distance of this court from Kericho Town.
6. The Applicant avers that the subject matter of this case, being the amount subject of the said agreements is one million, two hundred thousand Kenya Shillings (Kshs 1,200,000/=) or thereabouts, which exceeds the pecuniary jurisdiction of the small claims court, annexed and marked “PKC-5” is a copy of the letter of demand.
7. The Applicant avers that the Respondent filed Nakuru Small Claims Court Claim No E 182 of 2023 to forum shop and to disadvantage or otherwise burden him with unnecessary legal and travel costs, out of personal differences and had sworn to do so.
8. The Applicant further avers that the suit in Nakuru Small Claims Court Claim No E 182 of 2023 was an abuse court process.
9. The Respondent filed a replying affidavit in opposition to the application dated April 26, 2023, the affidavit was sworn by Ann Naanyu Kilele the Respondent herein.
10. The Respondent avers that the Applicant herein is indebted to her to the tune of Kshs 1,000,000/= causing her to institute the matter that is Nakuru Small Claims Court Claim No E 182 of 2023.
11. The Respondent avers that the basis of the above debt is an oral contract, which was executed by means of payment via mpesa to the applicant’s telephone number, and which online transactions were mostly from Nakuru, annexed and marked “PKC1” are copies of the mpesa statements and contrary to the applicant’s assertion, she never entered into any agreement with the applicant at Kapsoit Shopping Center.
12. The Respondent avers that her advocates on record have advised her that there are established Small Claims Courts within the Republic of Kenya, vested with jurisdiction to hear and determine matters whose pecuniary jurisdiction do not exceed Kshs 1,000,000/= such as the instant claim between the parties.
13. The Respondent avers that contrary to the Applicants assertions, there is no claim for Kshs 1,200,000/= that has been presented to the small claims court in Nakuru, her claim is for Kshs 1,000,000/= and that at paragraph 9 of her claim she forfeited all sums in excess of Kshs 1,000,000/= if any, as provided for in the [Small Claims Act](#).
14. The Respondent avers that the cause of action that led to the institution of Nakuru Small Claims Court Claim No E 182 of 2023 arose in Nakuru, and if the cause of action arose in Kericho which is vehemently denied, then the Small Claims Court in Nakuru would have been the right forum to file the suit as it is the nearest Small Claims Court from Kericho Town, as there is no Small Claims Court or Small Claims Court Registry established in Kericho.



15. The Respondent relied on provisions of section 15 of the *Small Claims Act* on territorial jurisdiction and reiterated that a party that meets any of the provisions set out in the said section was at liberty to lodge a claim within the Small Claims Court within which the territorial jurisdiction lies.
16. The Respondent reiterated that she being the party that was aggrieved and instituted the claim; (i) she resides and carries out business in Nakuru and that her physical address in the statement of claim indicated as much, (ii) that the oral contract between the parties was made in Nakuru, hence the cause of action arose in Nakuru and further that (iii) the payments related to the contract were made via mpesa from her physical residence in Nakuru.
17. The Respondent contends that contrary to the applicant's assertions that a respondent's place residence or place of carrying out business is not a sole factor as to where to lodge a claim, section 15 of the *Small Claims Act* among others considers the claimants place of residence and place of carrying out business unlike the *Civil Procedure Act*.
18. The Respondent contends that contrary to the applicant's assertions, the applicant will not be prejudiced if the matter were to be heard in Nakuru as the pleadings are filed both virtually and physically and the hearings are also conducted both virtually and physically, therefore, the applicant can prepare his witness statements in Kericho and file them virtually just as he filed his response to the claim, annexed and marked as "PKC-2" is a copy of the applicant's affidavit and can have his witnesses attend court sessions virtually.
19. The Respondent avers that the parties had already filed their compliance documents in Nakuru Small Claims Court Claim No E 182 of 2023 and the matter was ripe for hearing, but the applicant tactically wanted the matter delayed so that the same is not heard and determined within sixty (60) days as is the norm in the Small Claims Court.
20. The Respondent maintained that the instant application should be dismissed with costs for lack of merit.
21. The matter came up for inter partes hearing on May 22, 2023 and the learned counsel for the parties maintained that they would be relying on the notice of motion, supporting affidavit and replying affidavit respectively.
22. I have considered the application and the replying affidavit and I concur with the respondent herein that the instant claim between the parties falls within the pecuniary and territorial jurisdiction of the Small Claims Court.
23. Section 12 of the *Small Claims Court Act*, No 2 of 2016 provides as follows on nature of claims and pecuniary jurisdiction;
 - "(1) Subject to this Act, the Rules and any other law, the Court has jurisdiction to determine any civil claim relating to—(a) a contract for sale and supply of goods or services;
 - (b) a contract relating to money held and received; (c) liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property; (d) compensation for personal injuries; and (e) set-off and counterclaim under any contract.
 - (2) Without prejudice to the generality of subsection (1), the Court may exercise any other civil jurisdiction as may be conferred under any other written law.



(3) The pecuniary jurisdiction of the Court shall be limited to one million shillings.”

24. The Respondent herein maintains her claim as presented in her statement of claim in Nakuru Small Claims Court Claim No E 182 of 2023 is for Kshs 1,000,000/= and furthermore at paragraph 9 of her statement of claim, she forfeited all sums in excess of Kshs 1,000,000/= if any.
25. The Respondent relied on provisions of section 15 of the *Small Claims Act*, No 2 of 2016 on territorial jurisdiction, I have considered the said section, I find that a party that meets any of the provisions set out in the said section is at liberty to lodge a claim within the Small Claims Court within which the territorial jurisdiction lies, the respondent herein resides and carries out business in Nakuru and furthermore her physical address in the statement of claim filed in Nakuru Small Claims Court Claim No E 182 of 2023 indicated as much. I hereby find that the matter is properly before the Small Claims Court in Nakuru.
26. In response to the Applicants assertions that he will be prejudiced if the matter is conducted in Nakuru, I find that this does not hold water as the courts are now empowered to conduct matters virtually pursuant to the Kenya Gazette Vol CXXV-126, Gazette Notice No 7032 of 2023 dated June 2, 2023 on Practice Directions for Virtual Court Sessions, 2023.
27. Accordingly, I find the application dated April 26, 2023 has no merit. The same is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT THIS 15TH DAY OF JUNE, 2023

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant - Rutoh

Okino for the Respondent

No Appearance for Ochieng for the Applicant

