



**Madara v Nippon Imports Ltd (Civil Case 102 of 2021)
[2023] KEHC 27587 (KLR) (1 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 27587 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL CASE 102 OF 2021
F WANGARI, J
AUGUST 1, 2023**

BETWEEN

JAMES NYAMWATA MADARA PLAINTIFF

AND

NIPPON IMPORTS LTD DEFENDANT

RULING

1. The Plaintiff filed his suit on 4/10/2021 against the Defendant arising out of a sale of motor vehicle agreement, where the Defendant was accused of repossessing the motor vehicle from the Plaintiff, despite the later paying over 2/3 of the agreed price.
2. The Defendant filed a Notice of Preliminary Objection dated 15/7/2022, stating that the Resident Magistrates Court had pecuniary jurisdiction to hear and determine the dispute, and that the Plaintiff lacks locus standi to institute this suit before this court subject to the provisions of Section 20 of the *Consumer Protection Act*.
3. It was directed that the Notice of the Preliminary Objection be disposed of by way of written submissions. Both parties complied. I have considered the filed submissions and the issues for determination are;
 - a. Whether the Plaintiff was wrong in filing the suit before the High Court
 - b. Who is liable to pay the costs



4. On the jurisdiction of the court, it was well set out in the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR, Justice Nyaranga JA as then he was, sitting with Masime and Kwach JA, stated as follows;

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

5. Section 11 of the *Civil Procedure Act* provides as follows: -

“Court in which suit to be instituted Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts: Provided that—

- i. if a suit is instituted in a court other than a court of the lowest grade competent to try it, the magistrate holding such court shall return the plaint for presentation in the court of the lowest grade competent to try it if in his opinion there is no point of law involved or no other good and sufficient reason for instituting the suit in his court; and
- ii. nothing in this section shall limit or affect the power of the High Court to direct the distribution of business where there is more than one subordinate court in the same district.”

6. The section applies to the Subordinate Courts. It does not cover the High Court; whose jurisdiction is unlimited. The mere fact that matters have to be conveniently filed in the lower court, does not mean that the High Court has no jurisdiction over them.
7. In this case, the Defendant raised an objection that the suit ought to have been filed in the Magistrates Court as it had the pecuniary jurisdiction. The Plaintiff on the other hand stated that the High Court



was the appropriate court to file the suit pursuant to Section 20 of the [Consumer Protection Act](#) which provides as follows;

Repossession after payment of two-thirds

1. Where a consumer under a future performance agreement has paid two-thirds or more of his or her payment obligation as fixed by the agreement, any provision in the agreement, or in any security agreement incidental to the agreement, under which the supplier may retake possession of or resell the goods or services upon default in payment by the consumer is not enforceable except by leave obtained from the High Court.
 2. Upon an application for leave under subsection (1), the court may, in its discretion, grant leave to the supplier or refuse leave or grant leave upon such terms and conditions as the court considers advisable.
8. Upon reading the pleadings on record, there is no indication that the Defendant sought leave as provided for under Section 20 as stated above. I do agree with the submissions by the Plaintiff that the Defendant have offended the above section of the law as read together with Section 84 (1) of the [Consumer Protection Act](#), which states as follows;

‘If a consumer has a right to commence an action under this Act, the consumer may commence the action in the appropriate Court.’

9. The Plaintiff had the locus standi to institute the suit before this court. Further, the objection is being raised 2 years after the suit was filed. The Preliminary Objection by the Defendant therefore fails.
10. Having found that the suit is properly filed before this court, I have considered the monetary value involved in this suit. Section 18 of the [Civil Procedure Act](#) provides as follows;

Power of High Court to withdraw and transfer case instituted in subordinate court

- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—
 - (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (b) withdraw any suit or other proceeding 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; or
 - (iii) retransfer the same for trial or disposal to the court from which it was withdrawn.
- (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions



in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

11. This court can try any suit of any pecuniary jurisdiction. It is only that due to administrative and other statutory arrangement, the High Court has reserved for itself certain matters. There is however no lower limit to jurisdiction of the High Court as it has unlimited original jurisdiction under Article 165 (3) of the Constitution.
12. I exercise my discretion under Section 18 of the Civil Procedure Act and transfer this matter to the Chief Magistrate's Court at Mombasa for hearing and Disposal
13. The court makes the following orders: -
 - a. The Preliminary Objection is dismissed with costs to the Plaintiff.
 - b. The suit is transferred to the Chief Magistrate's Court in Mombasa for hearing and disposal.
 - c. The matter be mentioned on 15/8/2023 before the Chief Magistrate for directions on hearing.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 1ST DAY OF AUGUST, 2023

F. WANGARI

JUDGE

In the presence of;

N/A Advocate for the Plaintiff

Mwakizozo Advocate for the Defendant

Abdullahi, Court Assistant

