



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Wangui v Evergreen Ever Limited (Civil Appeal E124 of 2024)
[2024] KEHC 15827 (KLR) (2 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15827 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E124 OF 2024
GL NZIOKA, J
DECEMBER 2, 2024**

BETWEEN

TERESIA WANGUI APPELLANT

AND

EVERGREEN EVER LIMITED RESPONDENT

RULING

1. By a notice of motion application dated 4th November, 2024, the applicant is seeking for the following orders as here below reproduced: -
 - a. Spent
 - b. That, there be stay of proceedings in the Small Claims Court pending hearing and determination of the appeal herein.
 - c. That, it may please this Honourable Court and issue stay of execution of the Small Claims Court ruling dated 15th October 2024 pending hearing and determination of the suit herein.
 - d. That, the costs of this application be awarded.
2. The application is based on the provisions of section 1A, 1B, 3A of the *Civil Procedure Act* (Cap 21) Laws of Kenya, section 38 of the *Small Claims Court Act* (Cap 10A) Laws of Kenya, Article 159 of *the Constitution* of Kenya and all enabling provisions of the law.
3. The application is further supported by the affidavit of even date sworn by the applicant who avers that she filed a preliminary objection in the trial court dated 8th October 2024 challenging the geographical territorial jurisdiction of the Naivasha Small Claims Court to hear and determine the respondent's case.



4. That, the trial court in its ruling delivered on 15th October 2024 held that the respondent's registered address P.O. Box xx - 00227 Kinale Naivasha falls within the jurisdiction of the court and therefore dismissed the preliminary objection.
5. That the respondent's address P.O. BOX xx-00227 is in Kiambu County, Lari Sub-County and therefore outside the geographical territorial jurisdiction of the trial court. Therefore, the appeal is merited.
6. Further, the proceedings in the trial court are ongoing and if they are not stayed, the trial court will hear and determine the claim therein rendering the appeal nugatory.
7. However, the application was opposed vide a replying affidavit dated 8th November 2024 sworn by Stephen Karinge Kariuki the respondent's director.
8. He averred that the application is actuated with malice with the intent to delay the expeditious determination of the matter within two (2) months from the date of filing as per the spirit of the Small Claims Act.
9. That the claim was filed on 31st July 2024 and the defence filed together with a counter-claim. Furthermore, the claim was partly heard on 12th September 2024 and is scheduled for judgment 18th November 2024. Yet, the applicant has not withdrawn her counterclaim despite challenging the trial court's jurisdiction.
10. He deposed that, the applicant's challenge on whether Kinale is within Naivasha sub-County is a question of fact that needs to be ascertained by evidence.
11. Further, the applicant will not suffer any prejudice if the orders sought are not granted as she has filed a counterclaim seeking orders against the respondent. As such it is only fair that the application be dismissed with costs to allow the claim to be concluded as required under the *Small Claims Court Act*.
12. I have considered the application in the light of the materials before court and in particular the ruling of the court dated 15th October 2024, and I find that the issue before the court is whether the trial court has jurisdiction to hear and determine the matter.
13. The jurisdiction of small claims court is established under section 15 of the Small Claim Court Act which states as follows: -
 - (1) A person has the right to lodge a claim before the Court only if—
 - (a) such a person ordinarily resides or carries on business within the local limits of the jurisdiction of the Court;
 - (b) the subject matter of the claim is situated within the local limits of the jurisdiction of the Court;
 - (c) the contract to which the claim relates was either made or was intended to be performed within the local limits of the jurisdiction of the Court;
 - (d) the cause of action arose within the local limits of the jurisdiction of the Court; or
 - (e) the defendant to the claim resides within the local limits of the jurisdiction of the Court.
14. The afore provisions clearly spell out the factors to be considered in relation to the jurisdiction of the court before a claimant lodges the claim.



15. The said factors include but are not limited to the claimant's place of residence or business if the same is within the local limits of the jurisdiction of the court.
16. A perusal of the statement of claim shows that the claimant indicates its personal details as follows:
 - a. Name: Evergreen Ever Ltd
 - b. Postal Address: P. Box xx, - 00227 Kinale.
 - c. Physical address: Naivasha
 - d. Telephone contact: 072xxxx838
 - e. Email address: xxxx
 - f. Nature of business: Mpesa business
 - g. Location/sub-Location/Village: Naivasha
17. Pursuant to the afore particulars the claim herein follows under the jurisdiction of the Small Claims Court at Naivasha
18. Further, a claim can be filed if the subject matter of the claim is situated within the local limits of the jurisdiction of the court. From the statement of claim herein, it is clear that the claimant's business is Mpesa and that applicant was an employee in the Mpesa shop which situated in Naivasha and therefore the court has jurisdiction.
19. Furthermore, a claim can be lodged if the contract to which the claim relates was either made or was intended to be performed within the local limits of the jurisdiction of the Court. Thus pursuant to the afore employer and employee relationship the contract between the parties was executed in Naivasha, within the jurisdiction of the trial court. Finally, the cause of action arose within the jurisdiction of the trial court.
20. Be that as it was, it is also noteworthy that the applicant subjected herself to the jurisdiction of the court when she filed a defence and counterclaim and participated in the trial which has reached now the stage of judgment.
21. In so doing, by conduct she is estopped under the doctrine of estoppel from claiming that the trial court lacks jurisdiction.
22. The upshot of the afore said is that, the trial court has the requisite jurisdiction under section 15 of the Small Claims Act to hear the subject matter and therefore this appeal lacks merit and is dismissed. The trial court should proceed and deliver its judgment.
23. I make no order as to costs as each party will bear their respective costs.

DATED, DELIVERED AND SIGNED ON THIS 2ND DAY OF DECEMBER, 2024.

GRACE L. NZIOKA

JUDGE

In the presence of:

The appellant present virtually

Mr. Obino for the respondent

Ms. Doreen court assistant

