



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MURANG'A

CIVIL APPEAL NO. 208 OF 2013

[FORMERLY NYERI HCCA NO. 28 OF 2012]

ISAAC GATIRI MUCHIRI.....APPELLANT

VERSUS

GITHAMBO TEA FACTORY CO. LTD & 4 OTHERS.....RESPONDENTS

[Appeal from the ruling by J. Wekesa, Resident Magistrate, in

Murang'a CMCC No. 344 of 2011 delivered on 7th March 2012]

JUDGMENT

1. The gist of the appeal is whether the lower court erred by *striking out* the appellants' suit for want of *jurisdiction*.
2. The facts are fairly straight forward: The appellant filed a plaint in which he pleaded that in November 2011, the 1st respondent suspended him from delivering his green tea at Matharite Tea Buying Centre. The decision was enforced by the 2nd to 5th respondents.
3. He sought a declaration that the respondents' notice was null; and, for a permanent injunction to restrain them from the impugned conduct. He also prayed for compensation and costs.
4. The respondents lodged a joint statement of defence denying the claim *in toto*. At paragraph 9 of the defence, they contested the jurisdiction of the lower court on grounds that the matter was founded on the **Companies Act** [now repealed]. They also took out a preliminary objection dated 12th January 2012 pleading that the proper forum was the High Court.
5. The learned trial magistrate agreed with the respondents and held that the word "court" in the former Act meant the High Court. Accordingly, the lower court was not seized of jurisdiction. The plaintiff's suit was dismissed with costs.
6. The appellant has challenged those findings in a Memorandum of Appeal dated 16th March 2012. He has raised four grounds which I will compress into two: Firstly, that the learned trial magistrate misapprehended the issue of jurisdiction; and, secondly, that the claim against the 2nd to 5th respondents was made in their individual capacities.
7. I granted directions on 9th July 2018 that the appeal be canvassed through written submissions. The appellant filed submissions on 13th May 2019 while those by the respondents were lodged on 25th November 2019.
8. The hearing was fixed by *consent* for 1st July 2020. Learned counsel for the appellants informed me that he was relying wholly on the written submissions. The respondent's counsel did not attend the session.
9. This is a first appeal to the High Court. It is thus on both *facts* and the *law*. I have re-evaluated the record and drawn independent conclusions. ***Peters v Sunday Post Limited*** [1958] E.A 424, ***Selle v Associated Motor Boat Company Ltd*** [1968] E.A 123.
10. With great respect, I find that the learned trial magistrate fell into error on the question of jurisdiction. It is true that the repealed **Companies Act** reserves certain types of actions and disputes for the *exclusive* jurisdiction of the High Court. But there remains disputes that fall *outside* that rubric. In the instant case there was no doubt that Githambo Tea Factory Company Limited (the 1st respondent) was a company registered under the repealed Act.
11. However, the dispute in the lower court was *not* entirely about the appellant's *share* in the factory. It revolved around the denial by an

entity called *Matharite Tea Buying Centre* which refused to accept the appellant's green leaf. From the materials before the court, there were allegations that the appellant abused and assaulted another tea grower; and, that he refused to follow the *buying centre's* bye-laws. He was also accused of having failed to attend a number of meetings of the tea *buying centre's* committee.

12. Secondly, the appellant was challenging the conduct of certain *individuals* including the 1st respondent's Field Services Coordinator and the 2nd to 5th respondents. It was *not* pleaded by the other respondents were directors of Githambo Tea Factory Company Limited. So much so that the respondent's submission that the actions of the 2nd to 5th respondents were acts of the company is self-serving. That fact could only have been established by evidence at the trial.

13. For reasons that will become self-evident, I desist from commenting on the merits of the appellant's claim. In the end I find that it was erroneous to dismiss the case in the lower court for want of jurisdiction.

14. The upshot is that this appeal succeeds. The ruling of the lower court dated 7th March 2012 is hereby *set aside*. The case is remitted back to the lower court for hearing before any other magistrate other than *J. Wekesa*.

15. Costs follow the event and are at the *discretion* of the court. I grant the appellant costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 14TH DAY OF JULY 2020.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of:

Mr. Ndumu Kimani holding brief for Mr. Mwaniki for the appellant instructed by Mwaniki Warima & Company Advocates.

Mr. M. N. Ndung'u holding brief for Ms. Jayo for the respondents instructed by J. K. Kibicho & Company Advocates.

Ms. Dorcas Waichuhi & Ms. Susan Waiganjo, Court Assistants.