



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

MISCELLANEOUS APPL NO.E 064 OF 2020

VEKSONS LIMITED.....APPLICANT

-VERSUS-

WINCHEP & COMPANY LIMITED.....1ST RESPONDENT

CONSOLIDATED BANK OF KENYA.....2ND RESPONDENT

RINGA PROPERTIES LIMITED.....3RD RESPONDENT

PAUL OGADA.....4TH RESPONDENT

RICHARD ODUOR.....5TH RESPONDENT

RULING

1. I have before me a Notice of Motion application dated 17th February 2020. The application is filed by **VEKSON LIMITED** (hereinafter Vekson). Vekson seeks an order of transfer to this court from Milimani Chief Magistrate's Court Case CMCC No 2530 of 2017. In that case before the Chief Magistrate's court Vekson is the 2nd defendant. Vekson also seeks that on the transfer of that suit to this court that the transferred suit be heard together (not consolidated) with another suit before this court being HCCC No. 47 of 2018. In that case Vekson is the plaintiff.

2. The application is opposed by **WINCHEP & COMPANY LIMITED** (hereinafter Winchep). Winchep is the plaintiff in the Chief Magistrate's case. Opposition by Winchep is based on the grounds that Vekson amended its defence in the chief magistrate's court to claim pecuniary compensation of Ksh 58,319,614.00. Winchep deponed, through the affidavit of its director **Charles Wamae**, that the Chief Magistrate Court had no jurisdiction to grant leave to Vekson to amend its defence and counter claim for an amount beyond the jurisdiction of the Chief Magistrate's Court.

ANALYSIS

3. The jurisdiction of the Chief Magistrates Court is upto Ksh 20 million. See section 7 of the Magistrate's Court Act. It has often been stated that jurisdiction is everything. This was so stated by the court of appeal in the case **OWNERS OF MOTOR VESSEL 'LILIAN S' V CALTEX OIL (KENYA) LTD (1989) eKLR** the learned judge famously stated:

“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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.

4. Does this court have power to transfer suits instituted in the subordinate court or Chief Magistrates' Court? The answer is in the affirmative. The power to transfer is in section 18 of the Civil Procedure Act which provides:

(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.

5. The jurisprudence of such transfer has been stated and restates that it can only be where the suit sought to be transferred was filed in a court with jurisdiction to try it. I make reference, in this regard to two cases, the first is Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Maurice Munyao & 148 others (suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) [2019] eKLR where the Supreme Court stated:

“[154] However, as it was well elucidated in the case of Kagenyi v Musiramo & Another (1968) EALR 43, an order for transfer of a suit from one court to another cannot be made unless the suit has been brought, in the first instance, to a court which has jurisdiction to try it. It is therefore irrelevant as parties cannot consent to confer jurisdiction to a Court/tribunal where it is not provided by law.”

6. The second case is a High Court Case, that is ABRAHAM MWANGI WAMIGWI V SIMON MBIRIRI WANJIKU & ANOTHER[2012]eKLR where the court had this to say:

“Dealing with the same issue of jurisdiction, J B Ojwang, J (as he then was) in the Boniface Waweru Mbiyu vs. Mary Njeri & Another expressed himself as follows:

“Whenever a matter is filed before a Court lacking jurisdiction, the professional error there committed is a fundamental one, which cannot be excused as an ordinary mistake by counsel and which should not be held to prejudice the client. As between the advocate and his or her client, such a professional error could very well lead to claims in tort. As for the Court, the matter thus filed is so defective as to be a nullity. It is incompetent and void in law; and therefore it is not a motion or suit that can be transferred to any other Court. It is the duty of the Court or tribunal before which such matter is first brought to declare its status as a nullity; and it follows that such matter has no capacity to be transferred to any other Court”.

7. I began by stating the principle that jurisdiction is everything because the case being sought to be transferred was amended by the leave of the Chief Magistrate to the pecuniary jurisdiction beyond the jurisdiction under Section 7 of the Magistrates’ Court Act. In other words as of now that suit that Vekson seeks to transfer to this court is a nullity because it is for a claim beyond the jurisdiction of a Chief Magistrate.

8. But perhaps the more reason why I find there is no merit in the application is because the amendment that Vekson undertook in the case before the Chief Magistrate was a duplicate of Vekson’s claim before this court in case HCCC 47 of 2018. There is therefore no basis in law to permit Vekson to transfer the case from Chief Magistrates’ Court to bring to this court the very court which is hearing that case which is being sought to be transferred.

9. On the whole find that Vekson’s application is ill founded and it fails with costs.

CONCLUSION

10. The notice of motion application dated 17th February 2020 is dismissed with costs to Winchep & Company Limited.

11. This file shall henceforth be closed.

DATED, SIGNED and DELIVERED at NAIROBI this 8th day of JULY 2020.

MARY KASANGO

JUDGE

Before Justice Mary Kasango

C/A Sophie

For the Applicant:

For the Respondents:

ORDER

This decision is hereby virtually delivered this **8th** day of **July, 2020**.

MARY KASANGO

JUDGE