



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

MISCELLANEOUS CIVIL APPLICATION NO. E153 OF 2018

RICHARD BUSIENI.....APPLICANT

-VERSUS-

RHINO AGRIMAC & EQUIPMENT LTD.....RESPONDENT

RULING

1. Richard Busieni, the Applicant herein, was sued before the Milimani Chief Magistrate’s Court, in case No CMCC No 9166 of 2018, by Rhino Agrimac & Equipment Ltd, the Respondent herein. In that suit the Respondent alleges breach of contract by the Applicant and that the Applicant was supplied by the Respondent with a sprayer Optiz800 RPLI2T (the sprayer). It is also pleaded, in that suit, by the Respondent that the Applicant failed to pay the balance of the purchase price of that sprayer, being Ksh 500,000/=
2. The Applicant has filed before this Court a Notice of Motion application dated 9th November 2018. The Applicant seeks the transfer of the Chief Magistrate’s Court case form Milimani Court to Eldoret Chief Magistrate’s Court.
3. The Applicant’s sole ground of seeking that transfer, is as it is deponed by the Applicant, because he is a resident of Uasin Gishu County, in Eldoret, and because the transaction, the sale of the transfer, took place in Eldoret.
4. The Respondent through the replying affidavit, sworn by Hezron Geoffrey Nyaberi, opposed the application. He deponed that the Applicant went to the Respondent’s Nairobi Office, in November, 2014 situated at Kenbelt Industrial Park off Mombasa Road, Nairobi, seeking to purchase the sprayer. That the contract for the sale of the sprayer was entered into, between the parties, at the Respondent’s said office, in Nairobi. The Respondent further, through the depositions of Mr Nyaberi, stated that the Applicant selected the sprayer at the Respondent’s said office, made part payment of Ksh 600,000 and undertook to pay the balance of the purchase price, Ksh 500,000 on delivery of the sprayer.
5. The Respondent annexed to the affidavit of Mr Nyaberi the lease over the business premises of the Respondent, which lease indeed shows that the business premises of the Respondent are at Kenbelt (Kenya) Ltd.
6. The Applicant did not respond to those depositions of the Respondent. Those depositions remain unchallenged. It is also pertinent to note that the Applicant apart from attaching the plaint, filed in Chief Magistrate’s Court Milimani, he did not file any other supporting document to prove firstly that he resides in Uasin Gishu and secondly that the contract was entered also in Uasin Gishu. He who alleges must prove what they allege. See Section 107 of the Evidence Act Cap 80.
7. The Respondent on the other hand shows, in this matter, that it has its offices situated in Industrial area in Nairobi.
8. I do make a finding that the contract between the parties was entered in Nairobi and accordingly the Respondent rightfully filed the claim before the Milimani Chief Magistrate’s Court. Such filing was in compliance with Section 15 (c) of the Civil Procedure Act, Cap 21. That Section provides:

“Subject to the Limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

a.

b.

c. The cause of action, wholly or in part, arises”.

9. The Respondent cannot be faulted for having filed the suit before the Milimani Chief Magistrate's Court.

10. Accordingly the Applicant's application is without merit. The Notice of Motion dated **9th November 2018** is hereby dismissed with cost being awarded to the Respondent.

DATED, SIGNED and DELIVERED at NAIROBI this 5th day of MARCH, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie..... COURT ASSISTANT

..... FOR THE PLAINTIFF

..... FOR THE DEFENDANT