



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MACHAKOS

HCCC NO. 8 OF 2018

VICTORIA WANJIKU KAMAU.....PLAINTIFF

VERSUS

JOSEPH NJOROGI KAMAU.....1ST DEFENDANT

EQUITY BANK KENYA LIMITED.....2ND DEFENDANT

RULING

1. This Ruling is in relation to the pleadings dated, **28th November 2017** and filed in Court on the 29th November, 2017. A perusal of the pleadings indicates that the amount that is the subject of the suit is a loan of Kshs 3,000,000/- as evidenced by inter alia the agreement marked RA2 in the replying affidavit of the 2nd defendant deponed on 8th February, 2018 and this elicits the issue of jurisdiction. The issues to be determined are whether this court has jurisdiction and what orders may the court make.

2. In law no court or person assumes jurisdiction. Jurisdiction is a creature of statute. In Kenya, all courts derive their power from the Constitution under Article 159. The Constitution provides for the establishment of the Superior Courts under Article 162 and subordinate courts under Article 169. Judicial Power is exercised by the courts which consist of;

a) The Supreme Court

b) The Court of Appeal.

c) The High Court.

d) Subordinate courts including Magistrates Courts, Kadhis Courts, Court Martials. (See Article 169 of the Constitution).

3. Under the subordinate courts are the following hierarchy of courts as per the Magistrates Courts Act, 2015.

a) Chief Magistrate-pecuniary jurisdiction of Kshs. 50,000,000/-

b) Senior Principal Magistrate

c) Principal Magistrate

d) Senior Resident Magistrate

e) Resident Magistrate

4. Jurisdiction is specifically granted each court by law. The jurisdiction for instance of the High Court is unlimited in civil matters except employment and land matters. However the Magistrates Courts Act, 2015 makes provision for the nature of civil suits that are to be instituted in respect of a subject matter in accordance with the grade of a Magistrate.

5. In selecting a court with power over the type of litigation, regard must be made to the pecuniary limitation of such courts and the enabling law which empowers such court to hear such a case (see Section 4 and 12 of the Civil Procedure Act). The litigant must before choosing where to file a matter be informed by the subject matter of dispute. The question to consider before choosing the court is;

i) What is the pecuniary value of the subject matter?

ii) Which court is within the local limits where the property is situate?

See Section 11 and 15 of the Civil Procedure Act

6. In the instant case, the provisions of Section 11 of the CPA which require; “a suit to be instituted in the lower grade of court competent to try and determine it.” Combined with section 12 and 15 of the CPA, requiring suits to follow subject matter in terms of pecuniary and territorial jurisdiction all dictated the fact that the High Court was the wrong court for the instant case. The case could only be tried at before the magistrates court because as indicated in paragraph 1 above, the amount that is the subject of the suit is a loan of Kshs 3,000,000/- .

7. With regard to the second issue, Section 18(1) of the CPA is to the effect that “*On the Application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice the High Court may at any stage:*

(a) Transfer any suit or other proceedings pending before it for trial or disposal to any subordinate to it and competent to try or dispose of the same; or

(b) Withdraw any suit or other proceedings pending in any court subordinate to it, and thereafter-

(i) Try or dispose of the same,

(ii) Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same,

(iii) Transfer the same for trial or disposal to the court from which it was withdrawn.

8. The principles upon which this court will exercise its discretion as regards the transfer of cases have been well laid down in the Ugandan case of **David Kabungu v Zikarenga High Court Misc. App. 36 of 1995 [1995] 3 KALR** in which Okello J stated as follows:-

“Section 18(1) of the Civil Procedure Act gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. ... There are also authorities that the principal matters to be taken into consideration are balance of convenience, questions of expenses, interest of justice and possibilities to undue hardship and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the duplication must be refused.”

9. In addition, the overriding objective of the Civil Procedure Act and Rules made thereunder is to facilitate the just, expeditious, proportionate and or affordable resolution of civil disputes governed by the Act. In the furtherance of this overriding objective, the courts are mandated to ensure the just determination of proceedings, **efficient disposal of business of the court, the efficient use of available judicial and administrative resources** and the timely disposal of proceedings at a cost affordable by the respective parties. I find it would be efficient to allow the case now pending before this court to be determined by the magistrates’ courts. A transfer of the suit would be in the best interest of both parties, and there is no prejudice that shall be occasioned because there are no interim orders in force and the magistrate’s court is a stone throw away from this court.

10. In the result I find the instant suit was improperly filed before the court and in suo moto order transfer of the same to the magistrate’s court. I direct that the matter shall be mentioned before the Chief Magistrate’s Court on **5th December, 2019** for directions on how to proceed. Each party to bear their own costs.

It is so ordered.

Dated and delivered at Machakos this 21st day of November, 2019.

D. K. Kemei

Judge