



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI (NAIROBI)**

**COMMERCIAL AND ADMIRALTY DIVISION**

**APPEAL CASE NO.394 OF 2017**

**INTERNATIONAL PARTNERSHIP SERVICES EAST**

**QUESTWORK LIMITED.....1<sup>ST</sup> APPELLANT**

**VERSUS**

**TREBORUAMAK ESTATE INVESTMENT**

**MANAGEMENT COMPANY LIMITED.....1<sup>ST</sup> DEFENDANT**

**TREBORUAMAK CAPITAL COMPANY**

**LIMITED.....2<sup>ND</sup> RESPONDENT**

**ROBERT KAMAU NJUGUNA.....3<sup>RD</sup> RESPONDENT**

**JUDE ANYIKO.....4<sup>TH</sup> RESPONDENT**

*(Being an Appeal from the ruling of the Learned Magistrate (Hon. G.A Mmasi, Senior Principal Magistrate) in the Chief Magistrate’s Court at Nairobi in Civil Suit No.444 of 2017 delivered on 9<sup>th</sup> May 2017)*

**TREBORUAMAK ESTATE INVESTMENT**

**MANAGEMENT COMPANY LIMITED.....PLAINTIFF**

**VERSUS**

**QUESTWORK LIMITED.....DEFENDANT**

**AND BY WAY OF COUNTERCLAIM**

**QUESTWORK LIMITED.....PLAINTIFF**

**VERSUS**

**TREBORUAMAK ESTATE INVESTMENT**

**MANAGEMENT COMPANY LIMITED.....1<sup>ST</sup> DEFENDANT**

**TREBORUAMAK CAPITAL COMPANY LIMITED.....2<sup>ND</sup> RESPONDENT**

**ROBERT KAMAU NJUGUNA.....3<sup>RD</sup> RESPONDENT**

**JUDE ANYIKO.....4<sup>TH</sup> RESPONDENT**

## J U D G M E N T

### INTRODUCTION

The Appellant herein being aggrieved by the ruling delivered by G.A Mmasi Senior Principal Magistrate on 9<sup>th</sup> May 2017 filed this appeal. The ruling delivered followed a Preliminary Objection raised by the Defendant/Appellant, challenging jurisdiction of the Court to entertain the Plaintiff's claim. In the ruling, the Learned Magistrate noted the Plaintiff was claiming Kshs. 7,000,000 as per the Complaint filed while the Defendant on the other hand referred to huge amounts of Kshs. 169,000,000.

### **Grounds of Appeal**

1. That the Learned Magistrate erred in fact and law by holding that the Appellant's defence and counterclaim were filed without leave of the Court.
2. That the Learned Magistrate erred in fact and law by holding that there is no nexus between the issues raised in the Complaint and the counterclaim; failing to appreciate that the issues raised in the Complaint and counterclaim arose from a series of transactions that were so interconnected that they cannot be tried separately.
3. That the Learned Magistrate erred in fact and law by expunging the counterclaim.
4. That the Learned Magistrate erred in fact and law by failing to determine the issue of jurisdiction before hearing the application for exclusion of counterclaim.

### **Analysis and determination**

I have perused the ruling delivered on 9<sup>th</sup> May 2017 and note that the Learned Magistrate considered whether defence and counterclaim were filed within the period prescribed by the Civil Procedure Act and whether there is nexus between issues raised in the Complaint and the counterclaim. The Learned Magistrate arrived at a determination that the defence and counterclaim were filed out of time and that there is no nexus in the issues raised in the Complaint and counterclaim further that new parties have been introduced in the counterclaim.

I have had occasion to peruse the Complaint and the counterclaim. What is brought out in paragraphs 26, 27 & 28 of the defence and counterclaim is contract between the Defendant and one Jude Anyiko. The Defendant has particularized fraud against the Defendant by the said Jude in the counterclaim.

I also note that from Paragraph 32 to 34 of the Counterclaim, the Appellant entered into a contract with the said Jude Anyiko to source Kshs. 1.2 billion from Premier Credit Ltd; and that the Appellant was entitled to Kshs. 13,500,000 from the said amount being a share of commission. That is the amount claimed in the counterclaim. It is quite clear that the claim by Defendant is against the said Jude Anyiko and not the Plaintiff/Respondent. Having noted that there is no tripartite agreement between the three parties herein, the claim by Defendant against the said Jude Anyiko should not be lumped together with claim in this suit. In the event that a judgment is entered for the Plaintiff against the Defendant, the Plaintiff has an option of filing garnishee proceedings against the said Jude Anyiko if there is prove of entitlement of any monies from him to the Defendant.

From the foregoing, I find that the Learned Magistrate rightfully found that the counterclaim introduced new issues which should be subject of a separate suit.

I therefore find that the Learned Magistrate never misdirected herself by expunging the counterclaim.

### **FINAL ORDERS**

1. Appeal is hereby dismissed.
2. Costs to the Respondents.

**Judgment dated, signed, and delivered at Nairobi this 7<sup>th</sup> day of September, 2018.**

**RACHEL NGETICH**

**JUDGE**

**IN THE PRESENCE OF:**

**CATHERINE: COURT ASSISTANT**

**MS. KAGANI: COUNSEL FOR THE APPELLANT**

**MS. KABURU H/B FOR MR. KATAKA: COUNSEL FOR 2<sup>ND</sup>, 3<sup>RD</sup> & 4<sup>TH</sup> RESPONDENTS.**

MS. RUTO H/B FOR MS. MUREITHI: **COUNSEL FOR 1<sup>ST</sup> RESPONDENT.**