



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CIVIL SUIT NO. 411 OF 2012

MATHIRA COFFEE MILLERS LIMITED.....1ST PLAINTIFF

MATHIRA COFFEE MILLS LIMITED.....2ND PLAINTIFF

- VERSUS -

CENTRAL KENYA COFFEE MILLS LIMITED.....1ST DEFENDANT

CENTRAL KENYA COFFEE MILL LIMITED.....2ND DEFENDANT

JEREMY BLOCK.....3RD DEFENDANT

RULING

- 1.** The plaintiff's application dated 28th June 2016 is for the transfer of this case from the Commercial & Tax Division of the High Court in Nairobi, to the **ENVIRONMENT & LAND COURT, KERUGOYA.**
- 2.** It is the plaintiffs' contention that the pleadings in this case disclose that the matters in issue are all to do with the ownership of the land which was being fought over between the plaintiffs and the defendants.
- 3.** Therefore, the plaintiffs have invoked the provisions of Article 162 (2) (b) of the Constitution of Kenya, as a basis for seeking the transfer of the case.
- 4.** It was the understanding of the plaintiffs that the parties to the case were fighting about the issue of the ownership of the Coffee Mills which are embedded onto the two (2) parcels of land.
- 5.** The said parcels of land are located in Kerugoya.
- 6.** And as there was now a High Court and an Environment & Land Court in Kerugoya, the plaintiffs expressed the opinion that the case ought to be heard by the court at Kerugoya.
- 7.** But the defendants opposed the application, reasoning that the suit did not give rise to any issue relating to land.
- 8.** According to the defendants, there was no dispute about who owns the two (2) parcels of land.
- 9.** The defendants conceded that the land is owned by the 2nd plaintiff.

10. However, in the opinion of the defendants, the dispute is between the 1st plaintiff, (*on the one hand*) and the 2nd and 3rd defendants, (*on the other hand*).
11. A dispute about the ownership of the company was described by the defendants, as being one of a commercial nature. Therefore, the defendants insist that the case was properly before the Commercial Division of the High Court.
12. In any event, as the 3rd defendant is resident in Nairobi, whilst the Headquarters of the 2nd defendant is in Nairobi, the defendants invoked the provisions of sections 14 and 15 of the Civil Procedure Act, as providing the legal basis for insisting that the case be heard in Nairobi.
13. Finally, the defendants asserted that the attempt to move the case to Kerugoya was simply a belated effort to defeat the Directions which Mabeya J. had given on 14th August 2012. On that date the learned Judge had directed that the suit should be set down for hearing within 90 days.
14. But the plaintiff said that the court should not just take into account the convenience of the defendants. As far as the plaintiffs were concerned, there was need for the court to take into account the fact that the subject matter was located in Kerugoya.
15. In their reply to the defendants' submissions, the plaintiffs submitted that even if this was a commercial dispute, there is now a High Court in Kerugoya, which has the competence to determine it.
16. Posing there for now, it must be pointed out that the specific request by the plaintiffs was that the case be moved to the Environment and Land Court at Kerugoya.
17. And the main ground upon which that relief was sought is that the matters in issue revolved around the ownership of 2 parcels of land.
18. I therefore believe that the plaintiffs cannot be heard, at the stage of their reply to the defendants' submissions, to be speaking from both sides of their mouths.
19. If the plaintiffs were allowed to enlarge the scope of their application so as to encapsulate a situation in which the case was both dealing with issues of land ownership, whilst at the same time fitting within the category of cases to be heard by the Commercial Division of the High Court, that would be prejudicial to the defendants as they would not have the opportunity to answer to that expanded application.
20. In any event, if this is a case of a commercial nature, there would be no need to have it transferred from the Commercial Division.
21. Secondly, the defendants did not oppose the transfer of the case to Kerugoya because it was more convenient to the defendants to have the trial in Nairobi. The defendants' argument is based on Section 15 of the Civil Procedure Act which provides that;

“Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction –

a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for again; or

b) any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business or personally work for gain, as aforesaid acquiesce in such institution.

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

22. A corporation is deemed to carry on business at its sole or principle office in Kenya. Therefore, as the first 2 defendants have their Registered Offices in Nairobi, they are deemed to carry on business in Nairobi.

23. Meanwhile, the 3rd defendant is also said to be resident in Nairobi, where he also works for gain.

24. As the defendants have acquiesced in the institution of the suit in Nairobi, I hold the view that the Commercial Division of the High Court, in Nairobi, has the requisite jurisdiction to hear and determine the suit.

25. I also note that Mr. Mugo, the learned advocate for the plaintiffs, conceded that the Commercial Division of High Court in Nairobi has the competence and jurisdiction to hear and determine the suit.

26. This court acknowledges the fact that the High Court station at Kerugoya is a very new court. Therefore, it could not have featured in the equation when the plaintiffs were making a decision about the court where the suit would be instituted.

27. Does that mean that following the setting up of the High Court at Kerugoya, this case should, automatically, be transferred to Kerugoya?

28. The answer is in the negative.

29. Whilst cases may be transferred to the newer High Court stations because the cause of action accrued within their jurisdictions, it is not an automatic move. I believe that that is why even the plaintiffs in this case, sought to justify their request for the transfer.

30. On 13th August 2012 Mabeya J. already made the following observation;

“I have considered the affidavits on record and the presentations by learned counsel. What comes out clearly is that there is a serious dispute as to the existence and ownership of the company known as Mathira Coffee Mills Ltd?.

31. Apparently, the original Mathira Coffee Mills Limited insists that it is very much in existence; but there are also records which indicate that it changed its name to Central Kenya Coffee Mills Limited.

32. The existence of companies with similar names led the learned Judge to conclude that;

“...there exists a serious fraud or attempted fraud by either the plaintiffs or defendants against each other?.

33. So from the very start of the case, it was clear that the issue was not about the ownership of the land. It is about the ownership or existence of the company which owns the assets.

34. Accordingly, I find that this is not a matter which should be heard and determined by the Environment and Land Court. Therefore, the application for the transfer of the case to Kerugoya is rejected.

35. The plaintiffs will pay to the defendants, the costs of the application dated 28th June 2016.

DATED, SIGNED and DELIVERED at NAIROBI this 24th day of January 2017.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Mugo for the 1st Plaintiff

Mugo for the 2nd Plaintiff

No appearance for the 1st Defendant

Achoki for the 2nd Defendant

Achoki for the 3rd Defendant

Collins Odhiambo – Court clerk.