



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**MISC. APPL. 11 OF 2015**

**ONANDA ANDREW OKOTH .....PLAINTIFF/RESPONDENT**

**VERSUS**

**MERIDIAN ACCEPTANCE LIMITED.....DEFENDANT/APPLICANT**

**RULING**

1. The defendant/applicant's notice of motion dated 5.2.2015 prays for the following reliefs:

a. **spent**

b. **that civil case No.91/2014 filed at the Winam Court be transferred from the Winam Courts to be heard and determined by the Magistrate's Court at Nairobi.**

2. The application is supported by the annexed affidavit of Maria Matheha, the Credit Control Manager of the defendant sworn on 5th February, 2015. From the facts deponed therein it appears the respondent took a loan facility from the applicant and gave his motor vehicle Reg. No.KBV 400H as a collateral. He was unable to service the same and proceeded to file the civil suit at Winam where he was granted some orders. The applicant then filed a defence as well as a counter-claim. The said suit is yet to be heard and it appears that there are pending interlocutory applications including one on contempt.

3. The applicant contends that the court at Winam does not have the territorial jurisdiction as the contract was executed by the parties in Nairobi and that both parties reside in Nairobi. It urges that by filing the matter at Winam the applicant was going to incur great expenses in defending the same.

4. The respondent vide his replying affidavit dated 5.5.2015 strenuously opposed the same. He argues that all that the applicant is doing is avoiding contempt proceedings against it which are currently pending before the trial court at Winam. He argued that the defendant has in fact filed a counterclaim against it which effectively meant that he concedes to the jurisdiction of the court at Winam.

5. The parties have filed written submissions which I have perused together with the respective authorities. The question before court is not whether the court at Winam has jurisdiction to entertain the claim but whether it has the territorial jurisdiction to determine the suit.

6. I have perused the pleadings attached to the applicant's supporting affidavits which includes the complaint, defence and the loan documents. There is also the defendant's counterclaim. Clearly the issue of territorial jurisdiction was raised in the defence and it is evident that the applicant was opposed to it although Section 15 of the Civil Procedure Act states that the suits ought to be **“instituted in a court within the local limits of whose jurisdiction.....**

**(c) the cause of action wholly or in part arises.”**

7. And in explanation 3 it states:

**“In suits arising out of contract, the cause of action arises within the meaning of the section at any of the following places, namely -**

- i. the place where the contract was made;**
- ii. the place where the contract was to be performed or the performance thereof completed;**
- iii. the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.”**

8. The subject matter in the suit between the parties was purely commercial contract, which was executed in Nairobi. Infact the respondent has not denied this fact. The contract documents indicates the respondent's location in Nairobi It is therefore true that the proper place in which the suit ought to have been filed should have been within the geographical location of both the applicant and the respondent.

9. Consequently for the proper adjudication of the case and to save on time and expenses this matter ought to be heard and determined in Nairobi. I do not see any prejudice to be suffered by the plaintiff/respondent. He endorsed the documents in Nairobi. His residence is in Nairobi and infact the application for contempt which he alleges is pending can be well canvassed by the courts in Nairobi

10. The application is therefore allowed. Winam Civil case No.91 of 2014 is hereby transferred to Milimani Chief Magistrate's Court for hearing and determination. The applicant/respondent shall have the costs of this application.

**Dated, signed and delivered this 10TH day of MARCH 2016.**

**H. K. CHEMITEI**

**J U D G E**