



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 344 OF 2011

GEORGE KIRATU NDOGO.....1ST PLAINTIFF

MUNGAI NDOGO.....2ND PLAINTIFF

VERSUS

ATHMAN MUSTAFA T/A VANGA EXPRESS.....1ST DEFENDANT

ALUIYA OMARI T/A VANGA EXPRESS.....2ND DEFENDANT

RULING

1. The Plaintiffs filed a Notice of Motion under **Order 2 Rule 15 (1) a,b,c and d** and **Order 51** of the **Civil Procedure Rules** dated **31st October, 2013** seeking the following orders:

- a. That the Defence be struck out**
- b. That judgement be entered against the Defendants according to the prayers in the Plaint**
- c. That the costs of this application be provided for.**

2. I have looked at the plaint dated on **29th November, 2011**. This is a claim where the 1st defendant entered into an agreement in **2006** with the 1st plaintiff for the supply of two Mercedes Benz trucks. The 1st plaintiff paid the sum of **Kshs.6, 000,000** to the 1st defendant but the trucks were never supplied by the 1st defendant. The 1st defendant later promised to refund the sum and the 2nd defendant (the 1st defendant's wife) agreed to guarantee the debt. The plaintiff prays for the sum of **Kshs.6, 000,000** as well as costs of the suit and interest thereon.

3. This is purely a commercial matter. At this point I must address the issue of whether I have jurisdiction to determine this matter and subsequently the application and to grant the orders sought.

4. The Supreme Court in the case of **Samuel Kamau Macharia & Another V Kenya Commercial Bank Limited & 2 Others** [2012] eKLR held as follows on jurisdiction-

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with

counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings. This Court dealt with the question of jurisdiction extensively in, In the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law”

5. The Environment and Land Court is established under **Article 162(2)(b)**, of the constitution **to hear and determine disputes relating to the environment and the use and occupation of and title to, land.**

6. **Section 13** of this court’s constituent Act, the Environment and Land Court Act, provides:

“the Environment and Land Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with **Article 162(2)(b) of the Constitution and with the provisions of the Act or any other written law relating to environment and land.”**

7. From the foregoing provisions of the law, it is clear that the jurisdiction of this court is limited to determining matters on the Environment, the use, occupation and title to land in accordance with **Article 162(2) (b)** of the Constitution. This court therefore lacks jurisdiction to hear this matter and also the application before me or grant the orders sought.

8. It is always important to remember the observations by Nyarangi JA in THE OWNERS OF MOTOR VESSEL LILLIAN ‘S’ Vs. CALTEX OIL (KENYA) LTD [1989] KLR 1 at P14, that;

“Jurisdiction is everything. Without it, a court has no power to take one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending the evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.” (Emphasis Mine)

9. Having found as above, I hereby down my tools and direct that this file be placed before the Resident Judge for further directions.

Dated, signed and delivered at Nakuru in open court this 3rd day of October 2014.

L N WAITHAKA

JUDGE

PRESENT

Ms Wambugu holding brief for Wachira Mbugua for applicant.

Ms Fatuma holding brief for Morara Onsongo for the respondent.

Emmanuel Juma: Court Assistant

L N WAITHAKA

JUDGE