



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL SUIT NO 722OF 2008**

**JOHN MUREITHI KIARIE.....PLAINTIFF**

**VERSUS**

**KARANGI COFTA LIMITED.....1<sup>ST</sup> DEFENDANT**

**JORDU INVESTMENTS LIMITED.....2<sup>ND</sup> DEFENDANT**

**RULING**

**INTRODUCTION**

1. The Plaintiff's Notice of Motion application dated 6<sup>th</sup> September 2013 and filed on 7<sup>th</sup> October 2013 was brought under the provisions of Sections 1A, 1B and 3A of the Civil Procedure Act Cap 21 (Laws of Kenya), Sections 4 and 12 of the Industrial Court Act No 20 of 2011 and Article 162 (2) (a) of the Constitution of Kenya. It sought orders that the suit be transferred to the Industrial Court at Nairobi for hearing.
2. The application was premised on the grounds that the issues herein related to employment and labour relations between the parties and that the suit was filed on 5<sup>th</sup> November 2008 when the Industrial Court had not been established. The Applicant's argument was that this court no longer had jurisdiction to deal with the matter after the establishment of the Industrial Court under Article 162(2) (a) of the Constitution of Kenya, 2010 and therefore sought to have the suit transferred to that court. The said application was supported by the Affidavit of John Mureithi Kiarie that was sworn on 9<sup>th</sup> September 2013.
3. The Defendants filed an Opposition to Notice of Motion dated 11<sup>th</sup> November 2013 on the same date. They stated that they had opposed the Plaintiff's Notice of Motion dated 6<sup>th</sup> June 2013 to amend the Plaint on the ground that this court did not have jurisdiction to determine employment and labour relations issues.
4. They clarified that their objection had targeted parts of the application that were concerned with employment matters as the issue to be decided upon was whether there was any employer/employee relationship between the Defendant and the Defendant which would then be in the exclusive jurisdiction of the Industrial Court.
5. They, however, averred that they were opposing the Plaintiff's present application to transfer the suit herein to the Industrial Court for the reason that this court has jurisdiction to hear Management Contracts cases such as was in this case.
6. It is evident from Paragraphs 3 and 4 of the Plaint dated 3<sup>rd</sup> December 2008 and filed on 5<sup>th</sup> December 2008 that the Plaintiff was employed by the Defendants as a General Manager. There are several averments in the Plaint of what the Plaintiff was claiming he was entitled to as his

- commissions.
7. Whilst the Defendants may have argued that Management Contracts could be handled by the High Court, it would be impractical to separate the issues at hand as they are related, so that one issue is heard at the High Court and the other is heard at the Industrial Court. That notwithstanding, this court does not see any commercial element in the matter that would warrant it being heard in the High Court of Kenya Commercial & Admiralty Division.
  8. **The Practice Directions Relating To The Filing Of Suits, Applications and Reference in Proper Court, 2009 Gazette Notice No 1756** clearly stipulate as follows:-
    1. **The place of suing is to be determined in accordance with the provisions of Section 11 and 18 of the Civil Procedure Act and not according to the preference or convenience of the plaintiff...**
    2. **Where suits have already been filed in the wrong court, the Court should exercise its authority ...to return the plaint to be presented to the court in which suit should have been instituted, without prejudice to any other powers that it may possess under the law to strike out the pleadings as an abuse of the court process.**
  9. Parties ought not to file matters in courts which are convenient to them but rather they must follow the clearly laid down procedures for the sake of good order to avoid forum shopping.
  10. In light of the foregoing and having looked at the pleadings placed before the court and those on the court record, it is very clear that this is matter that should be heard and determined by the industrial Court. The suit was filed before the Industrial Court was established. It is the Plaintiff's case and he should be allowed to ventilate his case in the court he feels will best meet his interests and the ends of justice and one that is mandated by the Supreme and statutory laws to hear such matters.
  11. The Defendants' objections find no favour with this court, firstly because they are not convincing and secondly, because it was not clear to the court what the nature of the document titled Opposition to Notice of Motion was as it was neither Grounds of Opposition nor a Replying Affidavit. From the way matters stand, the Plaintiff's present application was unopposed.

### **DISPOSITION**

12. Accordingly, the upshot of the court's ruling is that the Plaintiff's Notice of Motion application dated 6<sup>th</sup> September 2013 and filed on 7<sup>th</sup> October 2013 is hereby allowed as prayed.
13. It is so ordered.

**DATED and DELIVERED at NAIROBI this 7<sup>th</sup> day of October 2014**

**J. KAMAU**

**JUDGE**