



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL MISCELLANEOUS APPLICATION 143 OF 2008

LONDON DISTILLERS (K) LIMITED APPLICANT

VERSUS

1. EMU LINES PVT LIMITED

2. LIMUTI HOLDINGS LIMITED RESPONDENTS

RULING

Before this court is a Notice of Motion by which the Applicant seeks the following orders:-

- “1. THAT this Honourable court be pleased to withdraw *Chief Magistrate Civil Case Number 2181 of 2006 between LONDON DISTILLERS (K) LTD –VS- EMU LINES PVT LTD AND LIMUTI HOLDINGS LTD* pending before the Mombasa Chief Magistrate Court, and thereafter transfer the same to the Chief Magistrate’s Court, Milimani Commercial Court, Nairobi for trial and disposal.**
- 2. THAT costs of this application be in the cause;”**

Mr. Kinyanjui advocate appeared in court and made oral submissions for the Applicant in support of the Notice of Motion whilst Mr. Omollo Advocate made oral submissions in opposition to the same.

This cause of action arose out of a contract for shipping of goods from India made between the Applicants and the Respondents who were agents of the shipping company. Mr. Kinyanjui for the Applicant submits that since the contract was for delivery of the goods to Nairobi the cause of action should be deemed to have arisen in Nairobi. However in the same breath Mr. Kinyanjui concedes that the initial contract was for delivery of the goods to Mombasa. It was only after an amendment to that original contract that the parties agreed to have Nairobi as the final destination for the goods. It would therefore appear that this is a matter in which there is concurrent jurisdiction – both in Mombasa and Nairobi Law Courts. The law on venue for the institution of suits is very clear. S. 15 of the Civil Procedure Act Cap 21 Laws of Kenya provides:-

“15 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 gain; 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; or

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

Mr. Omollo for the Respondents submits that they do carry on business and infact have their registered office in Mombasa. The Respondents do not have an office in Nairobi.

Following the provisions of S.15 then it stands to reason that on this basis alone the suit ought to proceed in Mombasa. No doubt this was the reasoning of the Plaintiffs when they instituted their suit at Mombasa Law Courts. It is curious that having filed their suit in Mombasa the Plaintiffs now seek to have it transferred to Nairobi. I further note that in their plaint dated 20th June 2006 and filed at the Mombasa Chief Magistrate’s Court on 5th July 2006 at paragraph 13 thereof the Plaintiffs state that:-

“13 This cause of action arose in Mombasa and Nairobi within the jurisdiction of this Honourable Court”.

Having therefore conceded to the jurisdiction of the Mombasa Court at what point and why have the Plaintiffs now changed their minds. The Plaintiffs have conceded that the goods in question were to be shipped to Nairobi via Mombasa. This is as it should be since Nairobi does not have a port to which the goods could be directly shipped. Having taken into account all relevant factors I find that this present application lacks merit. No valid, legal or convincing reason has been given for seeking such a transfer of the suit to Nairobi. As such I do dismiss this application in its entirety and further order that costs be met by the Applicant.

Dated and delivered at Mombasa this 7th day of October 2009.

M. ODERO

JUDGE

Read in open court in the presence of:-

Mr. Maundu holding brief for Applicant

Ms. Mbulika holding brief for Mr. Omollo for Respondent

M. ODERO

JUDGE

7.10.2009