



**Leseketeti v Kirisia Engineering Co. Ltd & another (Civil Case
E021 of 2021) [2025] KEMC 160 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEMC 160 (KLR)

**REPUBLIC OF KENYA
IN THE MARALAL LAW COURTS
CIVIL CASE E021 OF 2021
AT SITATI, SPM
JULY 17, 2025**

BETWEEN

ALEX LESEKETETI PLAINTIFF

AND

KIRISIA ENGINEERING CO. LTD 1ST DEFENDANT

MUSA LEWARGES 2ND DEFENDANT

JUDGMENT

1. By a Plaint dated 12th May, 2021 verified by an affidavit of similar date, the plaintiff prayed for the following reliefs:
 - a. The sum of Kshs 1, 477, 018
 - b. Interests on (a) above at commercial rates from the date of filing the suit until payment in full.
 - c. Costs of the suit.

Accompanying the plaint were:

- List and Witness statements of the plaintiff
- List and bundle of documents containing
Partnership Agreement dated 2nd November, 2017
Acceptance letter dated 10th July, 2017
Contract agreement dated 21st September, 2017
Release retention certificate dated 15th July, 2020
Release retention certificate dated 21st October, 2020
Invoice dated 21st October, 2020
Payment plan
Payment advice dated 19th November, 2020
Tax exemption dated 8th February, 2021
Memo dated 8th February, 2021
Bounced cheque dated 21st November, 2021
Agreement dated 13th May, 2020
Demand letter



- Further list and bundle of documents containing:

Letter addressed to the Ministry of Agriculture, Livestock and Fisheries dated 09/10/2018
Contract award dated 21st September, 2017
Agreement dated 02/10/2017
Project venture agreement dated 2nd November, 2017
Agreement executed on 22nd September, 2018
Letter addressed to the branch manager KCB Bank Maralal dated 15th November, 2019
Letter addressed to the Ministry of Agriculture, Livestock and Fisheries dated 10/04/2019
Letter addressed to the Ministry of Agriculture, Livestock and Fisheries dated 19/11/2019
Letter addressed to the Ministry of Agriculture, Livestock and Fisheries dated 18/02/2020
Handing over certificate dated 20th May, 2020
Letter to the Principal Secretary Ministry of Ministry of Agriculture, Livestock and Fisheries dated 4th July, 2020
Banker's cheque dated 21/11/2020
Letter addressed to KRA dated 8th February, 2021
A letter from the KRA dated 15th February, 2021
Payment receipt certificates
Interim payment certificates
Release retention certificate.

2. The suit was opposed by a joint Statement of Defence dated 17th November, 2021 in which the defendants denied all liability and fraud and prayed for a dismissal of the suit with costs. accompanying the defence were: Written witness statements of the 2nd defendant himself, Richard Kiunjuri and Saruan Leyagu. Notice dated 28th March, 2022 to Produce Particulars and Documents under Order 11 rule 2 (b) of the Civil Procedure Rules
3. The firm of Leparmarai & Associates Advocates initially represented the plaintiff but subsequently Kihoro Kimani & Associates came on record for the plaintiff while the defendants were represented by Nderitu Komu & Company Advocates.

The Plaintiff's Case

4. The trial began on 3rd August, 2023 when the PW1 ALEX LESEKETETI testified. He adopted his witness statement dated 21st March, 2022 as his testimony and produced all his listed documents as exhibits 1-31.
5. In summary, he told the court that he entered into a partnership agreement with the 2nd defendant to undertake a water project vide a tender awarded by the government. He added that towards the project, the partnership utilized the 1st defendant company operated by the 2nd defendant whereupon he raised the required capital for the works and performance bid as per the partnership agreement but afterwards, the 2nd defendant withheld his rightful share of the profits and other entitlements in excess of Kshs 1.4million as pleaded in the prayers hence this suit.
6. PW2 David Kinyoe adopted his witness statement dated 18th May, 2022 confirming that the tender was duly awarded, performed by the plaintiff and the 2nd defendant under a partnership agreement and subsequently the project funds paid out by the tendering authority.

At that stage, the plaintiff closed his case.

The Defence Case

7. DW1 Musa Lewarges adopted his witness statement dated 22nd April, 2022 and produced the above listed documents in evidence. In summary, he told the court that he partnered with the plaintiff to execute a major works project awarded by the government under a partnership agreement with 50:50 share of profits agreed upon. He added that each partner contributed capital totalling more than 2.6million towards commencing the works. He told the court that upon the implementation of the



works, he paid out the amount of Kshs 2, 500, 000 as the share of profit to the plaintiff but the plaintiff wanted more than what was his fair share of the profits hence this suit which he strongly opposed. At that stage, he closed his defence.

8. The duty of the court is to determine whether the suit is merited or not. Before making that determination, the court noted that an important question of jurisdiction is emergent the case.

Jurisdiction

9. Jurisdiction is everything and without it the court cannot make even one step. This was the principle stated by the Court of Appeal in the case of Owners of Motor Vessel Lilian “s” –vs- Caltex Oil (K) LTD (1989)eKLR (Nyarangi, Masiime & Kwach JJ.A) where the learned Judges had this to say:

“With that I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given” See Words and Phrases Legally defined – Volume 3: I – N Page 113

It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined.

I can see no grounds why a question of jurisdiction could not be raised during the proceedings. As soon as that is done, the court should hear and dispose of that issue without further ado.”



10. As was admitted by both parties, this suit is founded on the Partnership Agreement dated 2nd November, 2017 for undertaking the water project and other commercial undertakings by the parties. The agreed sharing ratio for the profits was 50:50. In the authority of *Hellen Wangari Wangechi –v- Carumera Muthoni Gathua (2015)eKLR* it was held that a partnership arises where 3 ingredients arise: a business, carried on in common and with a view to profit
11. Further, as was borne out of the pleadings and testimonies in court, the generated profits which constituted the current assets apart from the machinery and works involved were in excess of Kshs 5million. By this finding, the court’s attention was drawn to the provisions of the Partnership’s Act 2012 which provides at section 2 as follows:

“ court” means the High Court, or where the gross assets of a partnership do not exceed three hundred thousand shillings, the Resident Magistrate’s Court.
12. As provided for in the cited provision, the jurisdiction to determine a partnership dispute where the partnership has assets exceeding Kshs 300, 000 (including the current assets in cash) is vested in the High Court not a Magistrate’s court. Ideally, this point of law ought to have been raised by either of the parties at the preliminary stage as was held in the authority of *Mukisa Biscuit Company Ltd. –V- Westend Distributors (1969)EA 696*:

“ A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... [A] preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion’ . . .”
13. Clearly, the jurisdiction to determine this size of the partnership dispute is vested only in the High Court. Where a court lacks, jurisdiction, it lays down its tools as enunciated by the Court of Appeal in the authority of *The Owners of the Lilian “S”* set out in the preceding paragraphs.
14. That being so, the court dismisses the suit with costs for lack of jurisdiction. Right of appeal is 30 days.

DATED, READ AND SIGNED AT MARALAL LAW COURTS THIS 17th DAY OF JULY, 2025

HON.T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

MARALAL LAW COURTS

Present

Mr. Kihoro Mbugua Advocate for the Plaintiff

Nderitu Komu Advocate for the Defendants

Lemuya Court Assistant

