



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Njagi v Equity Bank (K) Limited (Civil Appeal E016 of 2022)
[2025] KEHC 1221 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1221 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E016 OF 2022
EM MURIITHI, J
FEBRUARY 27, 2025**

BETWEEN

FR. LUKE KIMINDA NJAGI APPELLANT

AND

EQUITY BANK (K) LIMITED RESPONDENT

JUDGMENT

1. The Appellant appeals against the Ruling and Order of the Honourable G.W Kirugumi made on 10th August, 2021 in which she found that the main cause of action arose in Karatina and thereby the court lacked territorial jurisdiction. She stayed the trial suit and directed the Appellant to move the High Court under Section 18 of the *Civil Procedure Act*.
2. Aggrieved with the said ruling and order, the Appellant filed a Memorandum of Appeal dated 18th February, 2022 based on following grounds:
 - a. Whether the Learned magistrate erred when she relied on Section 15 of the *Civil Procedure Act* instead of Section 14 of the Act.
 - b. Whether the Learned Magistrate erred when she failed to find that the Preliminary Objection before her was not a proper preliminary objection in law.
 - c. Whether the Learned Magistrate took into consideration extraneous matters.
 - d. Whether the court erred when it made the orders that it did?

The Appellant's case in the Lower Court

3. The Appellant's case was contained in the amended Plaintiff. It was the Appellant's (then Plaintiff) case that he owned and operated an account with the Defendant domiciled at Karatina Branch. In November 2015, he realized that he had been negatively listed in the Credit Reference Bureaus for a



purported facility owed to the Respondent herein then the Defendant. Upon investigations, he learned that the impugned facility had been fraudulently applied by and granted to one of its employees who had accessed and utilized his confidential information which he had shared with the Respondent.

4. The Appellant blamed the Respondent for breach of duty of care and confidentiality, negligence, fraud and defamation owing to the listing. The Plaintiff prayed for Kshs. 41, 193.15 which sum the Bank had debited towards the fraudulent loan, and also prayed for general damages.
5. The Bank filed a defence dated 3rd February, 2020, importantly, disputing the territorial jurisdiction of the court. The Bank further mounted a Preliminary objection dated 2nd June, 2021 which was the subject of the impugned ruling. Parties Submissions. The Respondent filed written submissions dated 22nd June, 2021. The Appellant filed undated submissions.
6. The Learned Magistrate delivered a ruling dated 10th August, 2021 and held that the court lacked territorial jurisdiction.

Appellant submissions

On reliance of section 15 instead of section 14 of the *Civil Procedure Act*.

7. Section 15 applies only if the preceding provisions do not apply. In this case, it is the Appellant's case that the wrongs complained against it as pleaded in the Amended Plaintiff including breach of confidentiality, negligence and defamation are wrong to his person for which he sought general damages as compensation. As a result, this ousts application of Section 15 of the Act.

On preliminary objection.

8. The Appellant submits that the issue of territorial jurisdiction is not a pure point of law and cannot be properly raised by way of Preliminary Objection.
9. In the case of Peter Ochola Omburo v Inter-Diocesan Properties Limited 2016 eKLR where a preliminary Objection was raised on the ground of territorial jurisdiction, the Employment and Labour Relations Court held as follows:

“...I buy the sentiments and submissions of the claimant/respondent that this preliminary objection is not based on a pure point of law as would be required per the authority of Mukhisa Biscuits Manufacturing Co. Ltd v West end Distributors Ltd [1969] E.A. 696 aforesaid. The issue of geographical jurisdiction like is submitted would require a verification of data and evidence to establish thus falling short of tenets of a preliminary objection.”

10. It is the Appellant's contention that the issue as to where the cause of action arose was contested by the parties even in their written submissions. It was the Appellant's contention, which he still holds, that defamation as pleaded in paragraph 13 of the Amended Plaintiff, “...was published at the instance of the Defendant and widely circulated to all credit reference bureaus and financial institutions within the Republic of Kenya and worldwide as it was available over the internet...”
11. The court went to find that the main cause of action was fraud and that it is the fraud that led to the defamation. On the contrary, the main issue was defamation.

Respondent submissions

12. The respondent submitted that it was evident that the cause of action in this matter arose in Karatina and it's clear from the plaintiff that plaintiff's bank account is at Equity Bank (Kenya) Limited, Karatina



Branch and his postal address is P.O. Box No. 2813 — 10140, Karatina and its therefore not clear why the plaintiff chose to file his claim at Kerugoya yet there is a court with competent jurisdiction to hear and determine this matter at Karatina and so the Learned Magistrate never erred when she failed to find that the Preliminary Objection dated 2nd June 2021 was not a proper preliminary objection and indeed it was a proper preliminary objection that raised a pure point of Law which led to the Ruling herein which is a subject of appeal and it was apparent that the Appellant is dishonest, untruthful and selfish to the Honourable Court hence being bad in law and an abuse of court process.

On reliance of section 15 instead of section 14 of the *Civil Procedure Act*

13. The respondent submits that from the Plaint herein, it is as clear that the plaintiff opened an account with the defendant account number...domiciled at Karatina Branch and at paragraph 9 the plaintiff pleads “the loan was fraudulently applied or and obtained by the defendant’s own credit manager at Karatina Branch using the plaintiff’s confidential documents.” And it was apparent that the appellant is dishonest, misleading: unjust unfounded unconvincing: unwarranted and selfish bearing in mind that the record of the court speaks for itself again and so the Learned Magistrate never erred in law when she applied Section 15 of the *Civil Procedure Act* in allowing the Preliminary Objection dated 2nd June, 2021 at that material time.

Issues

14. The issues for determination are:
 - a. Whether the Learned magistrate erred when she relied on Section 15 of the *Civil Procedure Act* instead of Section 14 of the Act.
 - b. Whether the Learned Magistrate erred when she failed to find that the Preliminary Objection before her was not a proper preliminary objection.

Analysis

15. Having considered the appellant’s memorandum of appeal of the court’s ruling on the Respondent’s Preliminary objections, the parties’ submissions, the next step is to analyse the two main issues in the appeal:

Whether the Learned magistrate erred when she relied on Section 15 of the *Civil Procedure Act* instead of Section 14 of the Act

16. Section 14 of the *Civil Procedure Act* provides as follows:
 - i. “Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of those courts.
 - ii. Illustration. —(a) A residing in Mombasa beats B in Nairobi. B may sue A either in Mombasa or Nairobi.
 - iii. Illustration.—(b) A residing in Mombasa publishes at Nairobi statements defamatory of B. B may sue A either in Mombasa or Nairobi.
17. Section 15 provides that “Other suits to be instituted where defendant resides or cause of action arises.”



18. The Appellant submits that the Learned magistrate failed to appreciate that the causes of action were premised on torts thereby wrongs to the person. Had she done so she would have appreciated that the applicable provision was under Section 14 of the Act which then ousted Section 15.
19. However, the Respondent submits that the Plaintiff is clear that the load was applied at the defendant's bank in Karatina. The trial court was correct to apply section 15 of the *Civil Procedure Act* in allowing the preliminary objection.
20. In the case *V N M v S M M & Another* [2018] eKLR, the court (on appeal) held that provisions of Section 15 of the *Civil Procedure Act* is for convenience of the parties, as it seeks to ensure that undue hardship is not visited upon a party defending a suit.
21. Thus, the matter is best suited to be heard and determined within the local limits territorial jurisdiction) of the defendant/respondent.

Whether the Learned Magistrate erred when she failed to find that the Preliminary Objection before her was not a proper preliminary objection.

22. The case of *Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors* (1969) EA 696 is notorious on the issue of what constitutes a preliminary objection where their Lordships observed thus:

“----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 a contract giving rise to the suit to refer the dispute to arbitration”.
23. In the same case Sir Charles Newbold, P. stated:
 - i. “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. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.
24. It is the appellant's contention that by the Preliminary Objection, the Respondent asked the court to determine issues as to whether the cause of action arose within the territory of the honourable court. In so deciding, the court was required to the cause of action and where it ascertain facts: to wit the limits of its territory arose where the Defendant carried on business amongst other issue. Accordingly, the Respondent's objection failed to satisfy the requirements set out in the hallowed precedents above.
25. The Appellant submits that the learned magistrate misdirected herself when she failed to set out or determine the issue whether the preliminary objection met the threshold in law. In *Zizu Investments Limited v Rovas Limited & another* [2021] eKLR the Court (J. Kamau J.) held as follows:

“The question of whether or not the lower court at Kisumu had jurisdiction to hear and determine the dispute was not a pure point of law. Indeed, the place of suing required to be ascertained from facts that had to be placed before the court. The question of where the contract was made where the cause of action arose where the Appellant carried on business



were matters of fact that required to be proven by facts, The Learned Magistrate did not therefore misdirect himself when he dismissed the Appellant's Preliminary Objection.

26. The respondent submits that from the plaint, it was evident that the cause of action in this matter arose in Karatina and it's clear from the plaintiff that plaintiff's bank account is at Equity Bank (Kenya) Limited, Karatina Branch and his postal address is P.O. Box No. 2813 — 10140, Karatina and its therefore not clear why the plaintiff chose to file his claim at Kerugoya yet there is a court with competent jurisdiction to hear and determine this matter at Karatina.
27. The issue that arises for determination herein is whether the Preliminary Objection raised is sustainable. I respectfully agree with the decision in *Zizu Investments Limited v Rovas Limited & another*, supra, depending on its own facts.
28. In this case, the facts were already set out in the Plaint, and the Preliminary Objection was considered on the basis of all Preliminary Objections that the facts as pleaded by the Plaintiff were correct and there was no need to ascertain any fact. It was merely the interpretation to be placed on those facts to the court as a matter of law.
29. It is accepted that an objection to the jurisdiction of the court has been cited as the preliminary objection that consists a point of law. Indeed, the locus classicus case on the question of jurisdiction is the celebrated case of *The Owners of Motor vessel Lillian 'S' v Caltex Kenya Limited* [1989] KLR 1:

“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 downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

30. The trial court relied on a pure point of law by holding that the appellant was in breach of section 15 of the *Civil Procedure Act*, and it is right where the causes of action in the suit was not one capable of description as a wrong to the person or property which would then invoke the provisions of section 14 of the *Civil Procedure Act*.
31. However, in this case paragraphs 12 and 13 of the Plaint sue for defamation. The Plaint is a multi-claim statement suing for breach of duty of care and confidentiality at paragraphs 10, fraud under paragraph 11 and defamation under paragraph 12 and 13. While breach of duty of care and confidentiality and fraud are other cases within the meaning of section 15 of the *Civil procedure Act*, the claims under defamation are clearly within the ambit of section 14 as claims on wrong to the person.
32. Paragraphs 12 and 13 of the Plaint are in the following terms:
SUBPARA i.
“12. The Plaintiff also states that the Defendant negatively listed him with the Credit Reference Bureaus notwithstanding its knowledge that the facility was obtained fraudulently by its own employees.
SUBPARA ii.
13. The Plaintiff states that report was published at the instance of the Defendant and widely circulated to all Credit reference Bureaus and financial institutions within the Republic of Kenya and worldwide as it was available online over the internet.”
33. Even when considered as subject to section 14, the plaintiff still required to demonstrate that the cause of action arose at the place of suing and or that the defendant resided here. On the evidence, the



defendant bank conduct business at Karatina and the cause of action arose at the same place. The result would have been different if the Plaintiff has sued in the High Court, at Kerugoya, which has nationwide unlimited jurisdiction in civil matters.

34. The appellants submissions fail on both counts under section 15 and 14 of the *Civil Procedure Act*. The cause of action arose at Karatina where the bank circulated the allegedly defamatory information regardless of the fact that it was made to “all the Credit Reference bureaus and financial institutions within the Republic of Kenya and worldwide as it was available online over the internet.”
35. The Preliminary Objection in this case was well taken as no facts required to be ascertained calling for a full hearing and what was sought was not an exercise of discretion but a determination as to jurisdiction without which the Court had no power to entertain and deal with the suit.

Orders

36. Accordingly, for the reasons set out above, the Court finds that the appeal has no merit and it is dismissed.
37. There shall be no order as to costs in the appeal.

Order accordingly.

DATED AND DELIVERED THIS 27TH DAY OF FEBRUARY, 2025.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

M/S Gikenye, Mugo & Rienye Advocates for the Appellant.

Mr. Magee for Respondent.

