



REPUBLIC OF KENYA



**Kanampiu & another v Marithi (Civil Case E009 of 2023)
[2025] KEHC 7699 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7699 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE E009 OF 2023
HM NYAGA, J
MAY 29, 2025**

BETWEEN

JULIANO MUTHURI KANAMPIU 1ST PLAINTIFF

JAPHETH KIRIMI MANAMPIU 2ND PLAINTIFF

AND

PATRICK KINOTI MARITHI DEFENDANT

RULING

1. This ruling is in respect to the Preliminary Objection dated 27th August, 2024.
2. The Objection is premised on the following grounds:-
 - a. That this Honourable court lacks territorial jurisdiction to hear and determine this suit since the Defendant permanently resides and carries on business in Nairobi County, as opposed to Meru County where the suit has been filed, in total disregard of Section 15 (a) of the *Civil Procedure Act*.
 - b. That the cause of action wholly arose in Nairobi County, where the subject company principally carries on its business as opposed to Meru County, thereby offending the provisions of Section 15 (c) of the *Civil Procedure Act*.
 - c. That this suit is grossly incompetent, brought in bad faith and only anchored at vexing the Defendant, hence the same should be struck out with costs for to the Defendant.
3. A brief background to the matter is that the Plaintiff, vide a plaint dated 21st September, 2023 sought the following orders against the Defendant:-
 - a. Payment of all the debts incurred by the company.
 - b. Payment of Kshs. 45,000,000/-.



- c. Ceasing using company assets.
 - d. Costs of the suit.
 - e. Any other relief the Honourable court may deem fit and just to grant.
4. The Plaintiffs case is that they are the registered owners of the company known as Eurofresh Limited. That in 2019, the Defendant approached the Plaintiffs and requested to become a shareholder of the company. That the parties entered into an agreement whereby the Defendant was to transfer 50% shares to facilitate the growth of the company. That differences arose later between the Plaintiffs and defendant. That the Defendant, who is an IT expert started controlling the company finances through a system called simple pay solution (SPS) at SBM Bank and denied the Plaintiff access to the finances. That the Defendant illegally changed the door locks for the company warehouse, used the company assets for his personal gain and channeled company funds to his personal account. That in addition, the Defendant made falsified entries of payment that had no supporting documents. That having killed the company, the Defendant went ahead to set up a company known as Acacia VegFruit Limited, Embakasi using the company's warehouse at Anees Park and used other company's infrastructure.
5. It is for these reasons that the Plaintiffs filed suit before this court.
6. The objection was canvassed by way of written submissions.

Defendant's Submissions

7. It is submitted that a question of jurisdiction is a valid point to raise as a preliminary objection. Cited was the case of Martha Akinyi Migambo Vs Susan Ongoro Ogenda (2022) eKLR.
8. It is further submitted that the Defendant permanently resides and carries on business in Nairobi County as opposed to Meru County. Thus, the suit offends Section 15(a) of *Civil Procedure Act*. That from the documents on the court record it is clear that the Defendant resides in Nairobi County, hence the suit ought to have been filed in Nairobi. Cited in support of this submission were the following cases:-
- a. Paul Ojingo Omega Vs Japheth Angita (2003) eKLR.
 - b. Grohe Dawn Watertech Fitting Division Pty Ltd Vs Ideal Ceramics (2018) eKLR.
9. It is further submitted that all the documents indicate that the company in question has its registered office in Nairobi. That the disputed bank account is at Nairobi. That the company's only warehouse is in Nairobi. Citing Section 15(c) of the *Civil Procedure Act*, the Defendant submits that this is further ground to hold that the suit ought to have been filed in Nairobi cited to support this submission were the following authorities:-
- a. Swiss Deli Trade (Panama) INC Vs Privamnuts EPZ Kenya Ltd (2020) eKLR.
 - b. Republic Vs Magistrates Court Mombasa; Absin Synergy Ltd (Interested Party)(2022) KEHC 10 (KLR).
10. It is thus argued that in view of the findings in the stated cases, the court ought to find that it has no jurisdiction and proceed to strike out the suit with costs to the Defendant.

Plaintiff's Submissions

11. It is submitted that the Applicant's allegations that the Defendant resides in Nairobi was not put in an affidavit. That the Defendant has not shown any disadvantage he will suffer by the suit being cited



in this court. To buttress this point the Plaintiffs cited *Kassam and Another Vs Pearl Beach Hotels T/ A English Point Marina (2022) KEHC 14132 (KLR)*.

12. It is further submitted that Section 15 of the *Civil Procedure Act* cannot limit the unlimited territorial jurisdiction of the High Court as provided under *the Constitution*.
13. It was further submitted that the overriding objective of the *Civil Procedure Act* and the Rules therein is for facilitate the just, expeditious, proportionate and affordable resolution of civil disputes. That in the current virtual era, matters can be filed electronically and that court retains and has territorial jurisdiction to head the suit regardless of the physical location of the parties involved.
14. The Plaintiffs thus urged the court to dismiss the preliminary objection with costs to them.

Analysis and Determination

15. This being a Preliminary Objection, then it has to fall within the parameters of such objection as was set out in *Mukisa Biscuits Ltd Vs West End Distributors Ltd (1969) EA 696* where it was held as follows:-

“So far as I am aware, 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.”

16. In *Oraro vs Mbaja 2005 1 KLR 141* the court described a preliminary objection as follows;

“A ‘Preliminary Objection’, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a Preliminary Objection and yet it bears factual aspects calling for proof, or seek to adduce evidence for its authentication is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”

17. On the same issue, in *Avtar Singh Bhamra & Another vs. Oriental Commercial Bank, Kisumu High Court Civil Case NO. 53 of 2004*, the Court held that:

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

18. The Defendant’s Objection is based on jurisdiction, so it is a valid point to raise as a Preliminary Objection.
19. Under Article 165(2) of *the Constitution*, the High Court has under clause (a) thereof, unlimited jurisdiction in criminal and civil matters. The only limitation to the High Court’s jurisdiction is as provided under sub-article (5) in respect to matters reserved for the exclusive jurisdiction of the Supreme Court and the courts of equal status, established under Article (62(2), being the ELC and the ELRC.
20. My understanding of the said Article is that there is no limitation to the jurisdiction of the High Court, monetarily or territorially.
21. So what is the purpose of Section 15 of the *Civil Procedure Act*? The Section provides as follows;
Other suits to be instituted where defendant resides or cause of action arises



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.

Explanation.(1)—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation.(2)—A corporation shall be deemed to carry on business at its sole or principal office in Kenya, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Explanation.(3)—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely—

- (i) the place where the contract was made;
- (ii) the place where the contract was to be performed or the performance thereof completed;
- (iii) the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable.

Illustration.—(a) A is a tradesman in Nairobi. B carries on business in Mombasa. B by his agent at Nairobi buys goods of A and requests A to deliver them to Mombasa by rail. A may sue B for the price of the goods either in Nairobi, where the cause of action has arisen, or in Mombasa, where B carries on business.

Illustration.—(b) A resides at Kisumu, B at Nairobi, and C at Mombasa. A, B, and C being together at Nakuru, B and C make a joint promissory note payable on demand and deliver it to A. A may sue B and C at Nakuru, where the cause of action arose. He may also sue them at Nairobi, where B resides, or at Mombasa, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the court.

22. In my view, while the said section provides a guide on the place of filing suit, it is applicable to courts whose territorial jurisdiction is defined and cannot override the Constitutional provisions regarding the jurisdiction of the High Court.



23. In *Selina Vukinu Ambe Vs Ketan Shashikant Khatri (2020)* eKLR the court held as follows as regards any limits to its jurisdiction under the *Civil Procedure Act*.

“The High Court’s jurisdiction being a creature of *the constitution* which is the supreme law of the land cannot be limited or fettered by any other written law including the *Civil Procedure Act*. In my view, any statute that would purport to limit the High Court’s jurisdiction as conferred by Article 165 (3) would to that extent be unconstitutional by virtue of Article 2 (4) of *the Constitution*.”

24. It is my further view that Section 15 of the Act is not meant to oust the jurisdiction of this court. It is there to ensure that a Defendant is not burdened by litigating in a distant and inconvenient forum, and to facilitate the expedient and affordable resolution of matters. This was so held in *Kassam and Another Vs Pearl Beach Hotles T/A English Point Maliva (Supra)* where it was held;

“The overriding objective of the Act and the Rules is to facilitate the just, expeditious, proportionate and or affordable resolution of civil disputes governed by the Act. In furtherance of this objective the courts are mandated to ensure the just determination of proceedings, efficient disposal of the business of the court, the efficient use of available judicial and administrative resources and timely disposal of proceedings at a cost affordable to the respective parties.”

26. Even in the authorities cited by the Defendant, the courts did not find that the High Court was not seized of the jurisdiction to hear the cases before them. They pointed to the purpose of Section 15 of the Act, which I have stated. For instance, in *Swiss Deli Trade (Panama) Inc v Privamnuts EPZ Kenya Limited (supra)* the Court held as follows:

Amongst the objectives for the provisions on place of suing is to ensure that suits are filed in as much as possible where the cause of action arose or where the subject matter is situate or in some instances where the Defendant arises. Suits should not be instituted in places that causes unnecessary hardship to the Defendant and which may hinder access to justice. Again suits should not be lumped in one station when they could be heard elsewhere as this may lead to clogging up of some Courts in a way that flies in the face of equitable access to justice.

The provisions of Section 15 which restricts the institution of suits within the local limits of High Court stations should be viewed in that light. So that “territory jurisdiction” placed by Section 15 does not mean that the “wrong” High Court does not have substantive jurisdiction in respect to the matter.

If I understand the rationale for the provisions of place of suing to be as discussed above, then this Court has power to simply transfer this suit to the place it should have been filed in the first place. This Court is not bereft of substantive jurisdiction but must pay homage to the noble objective of the provisions of Section 15 in ordering the place of suing as it does.

This Court upholds the Preliminary Objection under the provisions of Section 15 of The *Civil Procedure Act* with costs to the Defendant.

However, the suit shall not be dismissed. Instead, the Court orders that it be transferred to the High Court at Embu for hearing and disposal.

26. It is thus my finding that this court has the requisite substantive jurisdiction.



26. That said, the court ought to consider the matter in light of the said Section 15. If it finds that indeed the suit ought to have been filed in Nairobi, then what it ought to do is not to strike out the suit, but to order a transfer of the same.
26. From the pleadings filed by the Plaintiff, and not denied by the Defendant, Eurofresh Limited is a limited liability company. Its registered office, as per the details filed, is at HCDA Kariene Building, Nkubu Road, Meru. The company has 3 shareholders, the Plaintiffs and the Defendant. The Plaintiffs addresses are in Meru while that of the Defendant is in Nairobi.
26. From my reading of the pleadings, this is a dispute between shareholders/directors of the company, which is registered in Meru County. Even as much as the company also operated in Nairobi, and the defendant is said to reside in Nairobi, the actions complained of are said to have occurred partly in Meru and partly in Nairobi. Therefore the Plaintiffs had an option to file the suit either in Nairobi or in Meru. Having elected to file the suit in Meru, the Plaintiffs exercised their options in a regular manner.
26. For the foregoing reasons, I find that the Preliminary Objection is unmerited and it is dismissed with costs.

DATED, SIGNED AND DELIVERED IN MERU THIS 29TH DAY OF MAY, 2025

H. M. NYAGA

JUDGE

