Steel & Cement Store Eldoret Ltd v Pacific General Works Limited (Commercial Civil Suit E004 of 2024) [2025] KEHC 11243 (KLR) (30 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11243 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

COMMERCIAL CIVIL SUIT E004 OF 2024

RN NYAKUNDI, J

JULY 30, 2025

BETWEEN

STEEL & CEMENT STORE ELDORET LTD .... PLAINTIFF

AND

PACIFIC GENERAL WORKS LIMITED .... DEFENDANT

RULING

1. The Plaintiff instituted this suit vide a Plaint dated 29th February, 2024 in which it sought reliefs against the Defendant for payment of:

    a. Kenya Shillings Ten Million (Kshs. 10,000,000/=) as payment of outstanding balance for the goods delivered and received by the defendant.

    b. Kenya Shillings Thirty Million (Kshs. 30,000,000) for payment of penalties suffered by the Plaintiff in the Plaintiff's failure to service the loan occasioned by the actions of the defendant to wilfully refusing to pay the outstanding amount on time.

    c. General damages for the loss incurred as a result of loss of business and suppliers, loss of credit worthiness, damages and penalties incurred as a result of failing to meet its KRA obligations and incidental costs arising out of Bungoma High Court No. HCC E002 of 2024 Stephen Wangusi Fedha vs. Steel and Cement Store Eldoret Ltd.

    d. Interests at court rates.

    e. Costs of the suit.

2. The brief facts underlying the claim are that on diverse dates between 30/12/2022 and 25/5/2023 the Plaintiff supplied to the defendant several items of goods worth Kenya Shillings Nineteen Million Five Hundred and Fifty Four Thousand Nine Hundred and Fifty (Kshs. 19,554,950/=) in total and as at

5/2/2024 the defendant owed the Plaintiff Kshs. 10,000,000, which the defendant has failed, ignored, neglected and/or wilfully refused to pay.

3. The defendant filed a defence and counterclaim denying the plaintiff's claim and seeking overpayment of Kshs. 4,125,050/= through the counterclaim. In paragraph 13 of the defence dated 11th April 2024, the defendant admitted the court's jurisdiction but argued that the matter should first be referred to arbitration pursuant to both the parent contract and sub-contract agreement. Significantly, neither party adduced the parent contract as evidence in these proceedings.

4. Subsequently, the Defendant filed a Notice of Preliminary objection dated 25th August, 2024 raising the following grounds:

    a. That the defendant's registered offices is in Nairobi County.

    b. That by virtue of section 15 of the *Civil Procedure Act*, the suit should have been instituted at Nairobi where the defendant has a registered office.

    c. That accordingly, this Honourable Court lacks territorial jurisdiction to hear and determine the matter.

    d. That against this backdrop, the instant suit is improperly before this Honourable Court warranting dismissal in limine

5. This ruling concerns the Preliminary Objection raised by the defendant. I note that the plaintiff has not filed any response objecting to the preliminary objection. Nonetheless, I shall proceed to determine the preliminary objection on its merits.

Decision

6. This preliminary objection questions the territorial jurisdiction of this Honourable Court to entertain the present suit. The defendant contends that since its registered offices are situated in Nairobi County, this Court lacks jurisdiction to hear and determine the matter, and consequently, the suit should be dismissed in limine. In considering the objection, I have found it important to look into the statutory provisions governing territorial jurisdiction and the constitutional mandate that establishes the High Court's inherent powers.

7. In the locus classicus case of Mukisa Biscuits Ltd vs West End Distributors Ltd [1969] EA 696 the Court of Appeal for East Africa stated as follows:-

    > " .....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."

    Sir Charles Newbold P. stated:-

    > " 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."

8. The Supreme Court in the case of Hassan Ali Joho & another v Suleiman Said Shabal & 2 others SCK Petition No 10 of 2013 [2014] eKLR held that:-

> "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."

9. The present objection satisfies these criteria as it raises a pure question of law regarding territorial jurisdiction based on the pleadings, without requiring the ascertainment of additional facts.

10. The defendant's argument is anchored on Section 15 of the *Civil Procedure Act* Cap 21, which provides that suits shall be instituted in courts within whose local limits of jurisdiction the defendant resides, carries on business, or where the cause of action arises. At first sight, this provision appears to support the defendant's contention. However, a deeper analysis of the jurisprudential development reveals a more nuanced position. The provision reads thus:

> "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."

11. The Court of Appeal in Christopher Orina Kenyariri t/a Kenyariri & Associates Advocates v Salama Beach Hotel Limited & 3 others [2017] eKLR stated as follows:

> "On the last issue, section 15 of the *Civil Procedure Act* makes provision on where suits should be filed and requires that suits should be filed where the defendant lives or where the cause of action arises. We really do not understand why the appellant, who describes himself as a reputable scholar, bothered to raise this objection in respect of a suit filed in the High Court. Way back in 1958, the former Court of Appeal for Eastern Africa held, in Riddesbarger v. Robson [1958] EA 375, that section 15 of the Civil Procedure Ordinance (Now section 15 of the *Civil Procedure Act*) applies only to subordinate courts and not to the High Court. The reasoning of Forbes, JA. was that because the jurisdiction of the High Court (then known as Supreme Court) was provided for by the Kenya Colony Order-in-Council and was national, original and unlimited, it could not be limited by section 15 of the Ordinance. This was simply because the Order-in-Council was juridically a higher norm that the Ordinance. This Court upheld that position in *Francis Ndichu Gathogo v Evans Kitazi Ondansa & Another, CA. No. 287 of 2002*, where it reiterated that the jurisdiction of the High Court under *the Constitution*, being national, original and unlimited, could not be limited by section 15. In addition, the Court was of the view that section 15 was subject to the preceeding provisions of the Act, which deal with the subordinate courts, rather than the High Court. The High Court has followed that view in a number of decisions, among them

Gitau John Kimemia v. Unilever Tea Company Ltd HCCC No. 63 of 2007; Jane Wambui Weru v. Overseas Private Inv. Corp & 3 Others; HCCC No. 83 of 2012; and Aly Jamal v. Erastus George Momanyi & 2 Others, HCCC No. 34 of 2014."

We must reiterate that the High Court of Kenya remains one and the same court, only that it sits at different locations in the country, such as Malindi and Nairobi. The location where it sits cannot therefore affect its jurisdiction. The practice and requirements that suits be filed in particular stations of the High Court are purely for administration and convenience in the hearing and determination of suits. That is not in any way to suggest that such requirements or practice is unreasonable or unnecessary; it is intended to reduce costs of transporting witnesses from one corner of the country to another for hearing of cases and to expedite hearing and determination of suits, thus giving meaning to the overriding objective and the constitutional value in Article 159 which emphasize the need to reduce costs and delay in the hearing and determination of suits. (See Gitiha v. Family Finance Building Society & Others [2013] 1 EA 75)."

12. Further, in the case of Atta (Kenya) Limited V Nesfood Industries Limited [2012] eKLR, cited with approval in Samuel M. W'njuguna v Benjamin Achode & 8 others [2013] eKLR, the court stated as follows;

> "Be that as it may, given that *the Constitution* of Kenya Act, 2010 gives this court unlimited original jurisdiction in civil and criminal matters, and given the supremacy of *the Constitution* over the *Civil Procedure Act*, and given further that article 159 (2) (d) of *the Constitution* vouches for substantive justice even in the face of procedural technicalities, a party seeking to oust the jurisdiction of one station of the High Court in favour of another, must, in my view go beyond the face value of the tenents of convenience stipulated in Section 15 of the *Civil Procedure Act*. At the minimum, the applying party must demonstrate that the right of access to justice under Article 48 of *the Constitution* is at threat. This should be advanced by placing before the court material showing that beyond the pillars of convenience stipulated in Section 15 of the *Civil Procedure Act*, there is a verifiable motive on the part of the Plaintiff to use geographical inconvenience to defeat the substantive ends of justice. A mere apprehension of such a possibility may not suffice. Further, the Applicant should demonstrate that it has come to court at the earliest opportunity with its request."

13. *The Constitution* of Kenya, 2010, under Article 165, vests the High Court with unlimited original jurisdiction in civil and criminal matters. This constitutional mandate is supreme and cannot be curtailed by subsidiary legislation. As observed in Atta (Kenya) Limited V Nesfood Industries Limited [2012] eKLR, *the Constitution* of Kenya, 2010 gives this court unlimited original jurisdiction in civil and criminal matters, and given the supremacy of *the Constitution* over the *Civil Procedure Act*, any attempt to oust the High Court's jurisdiction must meet stringent criteria.

14. The constitutional principle in Art. 159(2)(d) emphasizes substantive justice over procedural technicalities. This provision mandates courts to prioritize the resolution of disputes on their merits rather than allowing technical objections to defeat the ends of justice, provided such technicalities do not prejudice any party's fundamental right to a fair hearing.

15. The practice of filing suits at particular stations of the High Court serves legitimate administrative purposes, including reducing costs of transporting witnesses and expediting the hearing and determination of suits, thus giving effect to the overriding objective under the *Civil Procedure Act*. However, as clarified in Gitiha v. Family Finance Building Society & Others [2013] 1 EA 75, such

requirements are purely for administration and convenience in the hearing and determination of suits and do not affect the Court's jurisdictional competence.

16. For a party seeking to challenge the choice of forum, the standard established in Atta (Kenya) Limited requires more than mere convenience arguments. The objecting party must demonstrate that there is a verifiable motive on the part of the Plaintiff to use geographical inconvenience to defeat the substantive ends of justice and must show that the right of access to justice under Art. 48 of *the Constitution* is at threat.

17. In the instant case, the defendant has failed to demonstrate any prejudice beyond the general inconvenience of defending the suit in Eldoret rather than Nairobi. There is no evidence of any motive by the plaintiff to defeat the substantive ends of justice through the choice of forum. The defendant has not shown that its right of access to justice is threatened or that it cannot adequately defend itself before this Court.

18. Having considered the legal authorities, constitutional principles, and the specific circumstances of this case, I find that this Honourable Court has jurisdiction to hear and determine the present suit. The defendant's preliminary objection is based on a misapplication of Section 15 of the *Civil Procedure Act*, which does not limit the High Court's constitutional mandate to exercise unlimited original jurisdiction.

19. As a matter of fact, it a constitutional imperative that justice delayed is justice denied. Hence both *the constitution* and the *Civil Procedure Act* assumes that the judicial system presided over by judges and magistrates had various levels of the courts in Kenya will operate properly and that a ruling or a judgement of either aye or nay will follow within a reasonable time. The *Civil Procedure Act* stipulates a mandatory period of 60 days. I dare say that this court has a constitutional duty to protect its processes and to ensure that parties who in principle have the right to approach it should not be prevented by an unreasonable delay in coming out with a judgement or a ruling on the dispute. The rendering of Judgement/Ruling within a reasonable time is not merely a matter of courtesy towards the litigants. It is the public its legitimate expectation respect for the administration of justice that a trial would commence and be concluded within a reasonable time. It is therefore much more than a matter of courtesy. Speaking further I regret that this case docket was indicative at the CTS as having been set down for ruling but on receipt of the commissions letter the same has not been in my physical custody until a search and find was mounted by the registry. To the parties I know the delay must have been frustrating and disillusioning creating an impression that Judges are imperious. Constitutionally parties are entitled to a prompt judgement as soon as reasonably possible. It so happens that our human fallibility may fail you but we are committed to a higher latitude of administration of justice.

20. Speaking further on the subject matter at hand, the following orders shall abide:

    a. The Defendant's Preliminary Objection dated 25th August 2024 is hereby dismissed.

    b. The matter is hereby scheduled on 7th August, 2025 for a Status conference.

    c. This ruling shall be shared with the Judicial Service Commission in compliance with the letter shared with the Deputy Registrar.

21. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA CTS AND EMAIL AT ELDORET ON THIS 30TH JULY 2025

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R. NYAKUNDI

JUDGE