



**Rasanga v Siaya Medical Hospital Limited (Commercial Case
E006 of 2022) [2024] KEHC 949 (KLR) (31 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 949 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
COMMERCIAL CASE E006 OF 2022
MS SHARIFF, J
JANUARY 31, 2024**

BETWEEN

IDA AH RASANGA PLAINTIFF

AND

SIAYA MEDICAL HOSPITAL LIMITED DEFENDANT

RULING

A. Background

1. Via a plaint dated 21st March 2022 the Plaintiff sued the Defendant for the amount of Kshs.16,201,353/= plus costs and interests on account of termination of a shareholder agreement. On the 16th of May 2022 the Defendant filed a defence contemporaneously with a preliminary objection in which they averred that:
 - i. This court lacks pecuniary jurisdiction to hear and/or entertain this matter as per Articles 165(5), (6) and (7), 169(1)(a) and (2) of the Constitution as read with Section 7 of the Magistrates Court Act.
2. It is this preliminary objection that is before this court for consideration. On the 7th of March 2023 parties agreed to have the preliminary objection being canvassed by way of written submissions. The Defendant filed theirs on 21st March 2023 while the Plaintiff filed submissions on 10th May 2023. For purposes of good order this court shall start with the Defendant's submissions.

B. Submissions

B (i) Defendant's submissions

3. The Defendant contended that the amount claimed in the plaint was below Kshs.20,000,000/= (twenty) million hence the matter should have been filed at the magistrate's court. Additionally, they



submitted that this court lacked territorial jurisdiction since the cause of action arose in Siaya where both parties reside.

4. In support of their averments, reliance was placed on Section 7 of the *Magistrate's Court Act* in respect of pecuniary jurisdiction and the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* (1989)eKLR on a court downing its tools immediately it realises it lacks jurisdiction. Further reliance was placed on *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel* (2016)eKLR wherein it was stated that the court should not through judicial craftsmanship sanctify an incompetent suit through transfer.
5. The Defendant also relied on the case of *Joseph Muthee Kamau & Anorther v David Mwangi Gichure & Anorther* (2013) eKLR where it was stated that a suit filed in a court without jurisdiction is a nullity and that jurisdiction must exist at the time of filing suit or latest at the commencement of hearing.

B(ii) Plaintiff's submissions

6. In response the Plaintiff submitted that as per the provisions of Article 165 of the *Constitution* the High Court was clothed with unlimited original jurisdiction. To this end, she argued that the High Court was constitutionally mandated to hear and determine all civil suits irrespective of the subject matter. It was her further argument that any statute purporting to limit the High Court's jurisdiction as conferred by article 165(3) was to the extent of the limitation unconstitutional.
7. With regard to territorial jurisdiction she insisted that the cause of action arose in Kisumu and that the Defendant's registered office was also in Kisumu. Additionally, she contended that there is a likelihood of the damages at the conclusion of the suit rising above the pecuniary jurisdiction of the Magistrates court hence the need to retain the suit in the high court.
8. In conclusion she submitted that the remedy for lack of pecuniary jurisdiction was not dismissal of the suit but rather transfer of the matter to the appropriate forum.

C. Analysis and Determination

9. I have extensively perused the preliminary objection, the submissions and the authorities attached thereto. The only issue that arises for determination is whether this court was the appropriate forum for filing of this suit.
10. Whereas this court does not dispute the unlimited original jurisdiction bestowed upon it by Article 165 (3)(a) of the *Constitution*, it recognizes that the same Constitution at Article 169 also establishes subordinate courts. Article 169 (2) specifically empowers parliament to enact legislation conferring jurisdiction on subordinate courts.
11. It is pursuant to Article 169 (2) that Parliament enacted the *Magistrates Court Act*, whose objectives as set out at Section 4 is; to facilitate just, expeditious, proportionate and accessible judicial services in exercise of criminal and civil jurisdiction. Section 7 (1) (a) of the Act confers the Chief Magistrate with pecuniary jurisdiction of up to Kshs.20,000,000/= (Twenty million).
12. It is trite law that the Constitution should be interpreted holistically and harmoniously. In the case of *James v. Commonwealth of Australia* [1936] AC 578 the court held as follows:

“A Constitution must not be construed in a narrow or pedantic manner and that construction must be beneficial to the widest possible amplitude of its powers...[and] a broad and liberal spirit should inspire those whose duty is to interpret the Constitution.”



13. In view of the foregoing it is my view that the jurisdiction conferred on this court by Article 165 (3) (a) does not in any way oust the jurisdiction conferred upon the magistrates' court by Article 169. The Court of Appeal in the case of *Speaker of the National Assembly v James Njenga Karume* [1992] eKLR, stressed as follows:

“.... In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed. We observed without expressing a concluded view that order 53 of the *Civil Procedure Rules* cannot oust clear constitutional and statutory provisions...”
14. Without unnecessarily belabouring the point the above provisions and cases are instructive that this case ought to have been filed at the magistrates' court given the amount claimed in the Plaint. Additionally, Section 11 of the *Civil Procedure* stipulates that every suit shall be instituted in the lowest grade competent to try it. In this case it is the Chief Magistrate's court.
15. Given that it is pleaded that the cause of action arose in Kisumu, the Chief Magistrate's Court in Kisumu has the territorial jurisdiction to hear and determine this suit. I am alive to the fact a dismissal of this suit would be draconian and unjust to the Plaintiff.
16. In view of the foregoing I do make an order that this suit be transferred to the Chief Magistrates court for hearing and determination.
17. Mention on 7th February 2024 before the Chief Magistrate No. 1 for taking of directions.
18. Given the inconvenience occasioned to the Defendant in defending this suit before this court, I do award it costs of this application.
19. Orders accordingly.

DELIVERED, DATED AND SIGNED AT KISUMU THIS 31ST DAY OF JANUARY 2024.

MWANAISHA. S. SHARIFF

JUDGE

