



REPUBLIC OF KENYA



Waweru v Prime Auto Solutions Limited (Miscellaneous Civil Application E053 of 2023) [2024] KEHC 1971 (KLR) (29 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1971 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E053 OF 2023
FN MUCHEMI, J
FEBRUARY 29, 2024**

BETWEEN

FELISTAS WANJERI WAWERU APPLICANT

AND

PRIME AUTO SOLUTIONS LIMITED RESPONDENT

RULING

Brief facts

1. The application for determination is dated 22nd November 2023 seeks for orders of transfer of Civil Suit SPMCC No. E454 of 2023 Ruiru to Milimani Chief Magistrate’s court on account of geographical jurisdiction. In the alternative, the applicant seeks for orders that this court declare or decree that the Senior Principal Magistrates Court sitting at Ruiru has geographical jurisdiction to hear and determine *SPMCC No. E454 of 2023*.
2. In opposition to the application, the respondent filed Grounds of Opposition dated 22nd January 2024.

Applicant’s Case

3. The applicant states that his motor vehicle registration number KAG 406T was involved in an accident and his insurance company M/s Monarch Insurance Co. Ltd directed that he take his vehicle to the respondent’s yard, garage for repairs. However, before repairs were commenced, the respondent and the insurance company differed on the costs of repairs of the said motor vehicle. The applicant states that the dispute could not be solved and the insurance company compensated him with a sum of Kshs. 210,000/- and gave him an option to take the said motor vehicle to a garage of his choice. The applicant contends that despite being issued with a letter of release of the said motor vehicle, the respondent insisted on being paid daily storage charges at Kshs. 1,000/- per day which the insurance company disputed.



4. Consequently, the applicant lodged *Civil Suit No. E454 of 2023* Ruiru and filed an application under certificate of urgency together with the plaint seeking the release of the motor vehicle. On 21st November 2023 the matter came up for hearing of the application and the trial magistrate gave directions to transfer the suit to another court with the requisite territorial jurisdiction.
5. The applicant states that the *Magistrates Court Act* No. 26 of 2015 which repealed the *Magistrates Court Act*, Cap 10 is silent on the issue of geographical jurisdiction. In the premises, the applicant contends that the suit having being filed in a court clothed with geographical jurisdiction, this court has the authority to order or direct the transfer of *SPMCC No. E454 of 2023* Ruiru to Nairobi Milimani Chief Magistrates Court for hearing and determination. Alternatively, the applicant urges the court to declare that the Senior Principal Magistrate Court at Ruiru has the territorial jurisdiction to hear and determine *SPMCC No. E454 of 2023* and direct that the same be heard and determined by any other magistrate other than Hon. C. K. Kisiangani who handled the matter on 21st November 2023.

The Respondent's Case

6. The respondent contends that the suit filed in the lower court as already defective ab initio and thus an abuse of the court process. The respondent argues that the suit was filed in Ruiru Law Courts yet the court lacked jurisdiction since the subject matter is in Ruai, within Nairobi. Thus, since the lower court already lacked territorial jurisdiction, the instant application is misconceived and untenable. To support this contentions, the respondent relies on the case of *Nickson M. Chanda vs Angela Kamwara* [2009] eKLR and states that the High Court cannot transfer a suit from a court that lacked jurisdiction in the first place to another court. Thus, the respondent contends that the applicant ought to file the suit afresh in a court of competent jurisdiction.
7. The respondent argues that the issue of territorial jurisdiction is not determined by the nearest court but by the county it falls within.
8. The respondent further argues that the applicant ought to have filed an appeal if it was dissatisfied with the lower court's determination of jurisdiction.

The Law

9. Section 18 of the *Civil Procedure Act* provides:-

On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage-

- a. Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
- b. Withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter-
 - i. Try or dispose of the same; or
 - ii. Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or



- iii. Retransfer the same for trial or disposal to the court from which it was withdrawn.

Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn

10. Section 18 of the Act empowers the High Court to withdraw and transfer a case instituted in a subordinate court on application of any of the parties or on its own motion. For the court to grant an order of transfer the applicant must satisfy the court as to the reasons for such orders.
11. This principle was enunciated in Julius Lekuruito & Another vs Nottingham Mwangi & Another (2018) eKLR where the court held:-

Under Section 17 and 18 of the Act, upon an application by a party, or on its own motion, the High Court may transfer the suit to another subordinate court with territorial jurisdiction, when justice of the case demands such action.

12. The Magistrates' Court Act No. 26 of 2015 has abolished the provision of country wide jurisdiction of magistrates' courts. Thus, the Civil Procedure Act appears to be the substantive provisions regarding the jurisdiction of magistrates' courts. This was stipulated in Paulo Anyanzwa Kutekha vs Steel Structures Limited [2018] eKLR where the court held:

This new Act appears to have removed the country wide jurisdiction of magistrates' courts. At any rate, there is not a similar provision in the statute. The territorial jurisdictions set out in the Civil Procedure Act, therefore now appear to be substantive provisions regarding jurisdiction of the magistrates' courts.

13. In this regard, the applicable provision is Section 15 of the Civil Procedure Act which provides:-

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 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 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.

14. The applicant states that the respondent's garage is along the Eastern bypass and thus the court within the nearest geographical jurisdiction is Ruiru Magistrate's court. The respondent on the hand, argues that it carries on its business in Nairobi and the subject motor vehicle is held in Nairobi. In that case, the applicant ought to have filed the suit in Nairobi and not in Ruiru. The respondent his grounds of opposition relies on the case of Nickson M. Chanda Vs Angela Kamwaria (2009) eKLR in arguing that the High Court has no jurisdiction to transfer a suit from a court which has no jurisdiction. According to the respondent, any suit filed in the wrong court should remain there. I have looked at the provisions



of Section 218 of the Civil Procedure Act which empowers this court to transfer suits on its own motion or by application of any of the party to another Subordinate Court. I find no provision prohibiting such transfer. Furthermore, the decision is a pre-2010 Constitution case. It is also a pre-2010 Civil Procedure Act and Rules which enacted provisions of Section 1A and 1B of the Act on the overriding Act and rules with a view of imposing a duty to the court to handle the matter before it with the purpose of attaining just determination of the proceedings; the timely disposal of the proceedings at a cost affordable to the parties among other aims.

15. If in the event that the suit filed at Ruiru was to be dismissed for the reasons given by the respondent, it would be contrary to the provisions of Section 159(2)(d) the Constitution and the overriding objective which would result in hardships and unnecessary cost to the parties. The Constitution and the Overriding Objective provide for expeditions disposal of cases which would be completely defeated by denying the orders sought in this application considering that Section 18 of the Act is very clear that this court has powers to transfer the suit provided the applicant satisfied the requirements of the law.
16. I come to the conclusion that the applicant has established the requirements of Section 18 of the Civil Procedure Act. The respondent carries on a business in Ruai in Nairobi County and the suit ought to have been filed in Nairobi – as provided for by Section 15 of the Act
17. The application is therefore, merited and it is hereby allowed. The suit Ruiru SPMCC No. E454 of 2023 is hereby transferred to Milimani Chief Magistrate court for disposal.
18. As for costs, the applicant having filed the suit in the wrong court will meet the costs of this application.
19. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT THIKA THIS 29TH DAY OF FEBRUARY 2024.

F. MUCHEMI
JUDGE

