



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CASE NO. E107 OF 2021**

**ZACHARIAH ONGERA MONGARE.....PLAINTIFF**

**VERSUS**

**NATIONAL BANK OF KENYA LTD.....1<sup>ST</sup> DEFENDANT**

**BETTY C. WANJIRU MURAGE.....2<sup>ND</sup> DEFENDANT**

**RULING**

The Preliminary objection raised by Counsel for the 1<sup>st</sup> defendant is that this suit is filed in the wrong court. He avers that this suit should have been filed at Thika Environment and Land Court pursuant to Sec. 12 of the Civil Procedure Act. He argues that, in view of this section then the court lacks jurisdiction to hear the matter in Milimani Nairobi. He relied on the *Mukisa Bisquite* case in prosecuting his Preliminary Objection. He stated that LR. Number Ruiru/Ruiru East Bloc3/929 is in Ruiru and therefore this Honorable court lacks the territorial jurisdiction to hear the case in Nairobi. He urged the court in his Preliminary Objection to dismiss the suit he never gave the option of having the suit transferred to Thika though he mentions the transfer to the Thika in his submission.

Mr Fredrick Ondigo learned counsel for the plaintiff argued that the 1<sup>st</sup> defendant is a company whose registered office is in Nairobi. He argues that section 13 of the Environment and Land Act has given this court original and appellate jurisdiction.

I have carefully considered the pleadings of the parties and have fully considered their submissions and arguments. I feel that striking out the suit for filing the same in the wrong court is a harsh and draconian measure. This will not finally resolve the issues between the parties, it merely prolongs the dispute since the plaintiff is not prevented from filing a fresh suit subject to limitation of time.

I therefore order that this suit be transferred to the Thika Environment and Land Court Registry. The same shall be placed before the Presiding Judge there for further directions, orders and final determination. The costs of this transfer and other incidentals shall be in the suit.

It is so ordered.

**DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JANUARY 2022**

.....

**MOGENI J**

**JUDGE**

**IN THE PRESENCE OF**

.....**FOR PLAINTIFF**

.....**FOR 1ST DEFENDANT**

.....**FOR 2ND DEFENDANT**