



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUSIA.**

**MISC. APP. NO. 149 OF 2013.**

**SOFIA NASICHE WESONGA ::::::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**JUMA KULUNDU MULISYA ::::::::::::::::::::::::::::::::::::::: RESPONDENT.**

**R U L I N G.**

**JUMA KULUNDU MULUSYA**, hereinafter referred to as the Respondent through his advocates, Marisio Luchivya & co. advocates, filed a notice of preliminary objection dated 6<sup>th</sup> September, 2013 to the Applicant's notice of motion dated 5<sup>th</sup> November, 2012 and filed on 21<sup>st</sup> August, 2013. He seeks to have the application herein and Busia CMCC. No. 141 of 2012 struck out with costs for the following reasons;-

1. That the suit land, South Wanga/Lureko/449, is situated in Mumias District, in Kakamega County and therefore under section 13 of C.P.A, the suit ought to have been filed in court in that county.
2. That both the parties in Busia CMCC. No. 141 of 2012 resides in Mumias District in Kakamega County and therefore under section 15 such a suit be filed in the courts in that County.
3. That both this court and the subordinate court in Busia have no jurisdiction to hear the suit and the same should be struck out.

The Applicant, Sofia Nasiche Wesonga, through her advocate Ashioya & co. Advocates opposed the preliminary objection and filed grounds of opposition dated 7<sup>th</sup> October, 2013 setting out the following reasons;-

1. That the preliminary objection lacks any backing in law as the High court of Kenya has unlimited jurisdiction.
2. That the preliminary objection is made in bad faith, is oppressive and meant to scuttle Applicant's rights to peaceful and quiet occupation of the land.
3. That the preliminary objection lacks in merit and should be dismissed with costs.

During the hearing, the Applicant and her advocate did not attend court even though the hearing date had been agreed by consent. The court allowed the Respondent's counsel to prosecute his preliminary objection. The court having considered the Counsel's submissions in support of the preliminary objection find as follows;-

1. That the Respondent's contention that both parties in Busia CMCC. 141 of 2012, who are also the same parties in this application, resides in Mumias District of Kakamega County has not been disputed by the Applicant.
2. That the Applicant has also not disputed the Respondent's contention that the suit land, South

Wanga/Lureko/449 is situated in Mumias District in Kakamega County.

3. That this court is aware there is a subordinate court at Mumias town and a High Court at Kakamega town both in Kakamega County. Therefore in terms of sections 12 and 15 of the Civil Procedure Act, the Lower court case should have been filed at Mumias Law court. It follows therefore the superior court under which Mumias Law Courts falls is Kakamega High Court and that is where the current application should have been filed. The provisions of the Civil Procedure Act on the territorial jurisdiction are meant to be obeyed by all litigants including the Applicant herein.

That having found as above, the preliminary objection by the Respondent is upheld and the following orders issued;-

- a. That Busia CMCC. NO. 141 of 2012 is hereby struck out for being filed in a court outside the territorial jurisdiction.
- b. That the notice of motion filed herein and dated 5<sup>th</sup> November, 2012 is hereby struck out for the same reason in (a) above.
- c. The Applicant to pay the Respondent's costs in Busia CMCC. No. 141 of 2012 and in this application.
- d. The Applicant at liberty to initiate his claim in the appropriate court subject to limitation of time as is usual.

It is so ordered.

**S. M . KIBUNJA.**

**JUDGE.**

DATED AND DELIVERED ON 24<sup>TH</sup> DAY OF MARCH, 2014.

IN THE PRESENCE OF;

**S.M. KIBUNJA,**

**JUDGE.**

DATED AND DELIVERED ON 24<sup>TH</sup> DAY OF MARCH, 2014.

IN THE PRESENCE OF;

**JUDGE.**