



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

**CIVIL DIVISION**

**CIVIL SUIT NO. 169 OF 2013**

**(FORMERLY NAIROBI HC ELC NO. 542 OF 2013 NO 440 OF 2013**

**FRESCO BUSHLANDS (K) LTD.....PLAINTIFF**

**VERSUS**

**AGRICULTURAL DEVELOPMENT CORPORATION.....DEFENDANT**

**R U L I N G**

1. The present suit is on all fours with *Nairobi HCCC No. 65 of 2013* as far as places of suing and trial are concerned. I had occasion recently in that case to consider the same issues. In a ruling dated 6<sup>th</sup> and delivered on 7<sup>th</sup> June 2013 I expressed myself thus -

“Section 12 of the (Civil Procedure) Act provides –

*‘12. Subject to the preliminary or other limitations prescribed by any law, suits –*

- a. *for the recovery of immovable property; with or without rent or profits;*
- b. *for the partition of immovable property;*
- c. *for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;*
- d. *for the determination of any other right to or interest in immovable property;*
- e. *for compensation for wrong to immovable property;*
- f. *for the recovery of movable property actually under distraint or attachment,*

*where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate:*

*Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of*

*whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personal works for gain.'*

**“The present suit is for the “determination of any other right to or interest in immoveable property”. Ordinarily therefore the suit ought to have been filed at Malindi because the suit property is situated within the immediate local jurisdiction of the High Court at Malindi.**

**“It has been urged for the Plaintiff that under the proviso to section 12 the Plaintiff had a choice to institute the suit either at Malindi or at Nairobi; and it chose Nairobi. That appears to be so. Order 47, Rule 1 of the Civil Procedure Rules, 2010 (the Rules) provides**

**‘1. Every suit in the High Court may be instituted at the central office of that court situate in Nairobi or in a District Registry.’**

**“There are various registries of the High Court established, including Malindi.**

**“Order 47, Rule 1 reinforces the High Court’s country-wide jurisdiction as there is only one High Court in this country. So, it appears that a High Court suit may be filed either at the Central Registry of the High Court at Nairobi or in a District Registry. All that concerns institution of suits in the High Court.**

**Let us now consider the place of trial. Order 47, Rule 6 provides as follows –**

*‘6. (1) Every suit whether instituted in the Central Office or in a District Registry of the High Court shall be tried in such place as the court may direct; and in the absence of any such direction a suit instituted in the Central Office shall be tried by the High Court sitting in the area of such Central Office and a suit instituted in a District Registry shall be tried by the High Court sitting in the area of such District Registry.*

*(2) The court may of its own motion or on the application of any party to a suit and for cause shown order that a case be tried in a particular place to be appointed by the court:*

*Provided always that in appointing such particular place for trial the court shall have regard to the convenience of the parties and of their witnesses and to the date on which such trial is to take place, and all the other circumstances of the case.’*

**“The suit property in this suit is a huge tract of land situated in Malindi County. It is conceivable that in the course of proceedings the court may want to view the land. Trial of a suit must of necessity include all proceedings leading up to the trial.”**

2. I therefore hold that it would be best for all concerned that this case be dealt with by the High Court at Malindi. In the circumstances I direct that the suit be transferred to Malindi forthwith. Costs shall be in the cost. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JUNE 2013**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF JUNE 2013**

