



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

**CIVIL DIVISION**

**CIVIL CASE NO. 65 OF 2013**

**SAHAL AGRO-HOLDINGS LIMITED..... PLAINTIFF**

**VERSUS**

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

**RULING**

1. The subject of this ruling is whether the suit herein should be transferred to the High Court at Malindi for disposal. The subject-matter of the suit is a very large parcel of land (measuring 100,000 acres), **L.R. GALANA RANCH BLOCK 1/1** situated in **Kwale County in Coast Province**.
2. It is the Plaintiff's case that at all material times the Plaintiff had a long-term lease from the Defendant over the suit property; that on 23<sup>rd</sup> October 2012 the Defendant gave to the Plaintiff notice of termination of the lease by 20<sup>th</sup> November 2012; that on 29<sup>th</sup> November 2012 the Plaintiff unsuccessfully sought rescission of the notice from the Defendant; and that on 4<sup>th</sup> December 2012 the Defendant confirmed the termination of the lease and barred the Plaintiff from accessing the suit property. It is the Plaintiff's further case that the Defendant's actions have violated the Plaintiff's accrued right to property.
3. The Plaintiff has further pleaded that the lease agreement contains an arbitration clause.
4. The Plaintiff has sought two main reliefs in the plaint rendered as follows-

**“(a) A permanent injunction restraining or prohibiting the Defendant whether by itself, its agents, employees, assigns, Advocates, servants or otherwise howsoever and any persons whatsoever from evicting the Plaintiff, its agents, employees, assigns, advocates, servants to any other person(s) from Title Number Galana Ranch Block 1/1 or interfering with its right of possession and development to Title Number Galana Ranch Block 1/1 pending the Arbitration and Award pursuant to Clause 8 of the Lease Agreement.**

**(b) A permanent injunction restraining or prohibiting the Defendant whether by itself, its agents, employees, assigns, advocates, servants or otherwise howsoever and any person whatsoever be from interfering, stopping, or intermeddling with the Plaintiff's developments in Galana Ranch Block 1/1 pending the Arbitration and Award pursuant to Clause 8 of the Lease Agreement. ”**

5. Together with the plaint the Plaintiff filed an application seeking appropriate temporary injunctions pending disposal of the suit. Interim injunctions were also sought pending hearing and determination of the application. Interim injunctions were granted *ex parte* on 5.2.2013 and have been extended from time to time.

6. The Defendant opposed the application by grounds of opposition and replying affidavit filed on 15<sup>th</sup> February 2013. It also filed a statement of defence on 26<sup>th</sup> February 2013. The Defendant admitted the Plaintiff's lease. It also admitted terminating the lease but pleaded that it did so after failure to performance by the Plaintiff.

7. The arbitration clause in the lease agreement was also admitted. The Defendant prayed for stay of this suit pending outcome of the arbitration.

8. On 27<sup>th</sup> February 2013 the Defendant filed a **notice of motion dated 25<sup>th</sup> February 2013** seeking the main order that the interim injunctions granted *ex parte* on 5<sup>th</sup> February 2013 be set aside. The Plaintiff opposed the application by replying affidavit filed on 17<sup>th</sup> April 2013.

9. I heard arguments on the issue at hand on 21<sup>st</sup> May 2013. It was submitted for the Plaintiff that **Article 159(2) (C)** of the **Constitution** gives parties the right to choose the forum where their dispute is to be tried, and that once that choice has been made the court should respect it. It was further submitted that the Plaintiffs came to this court only for interim relief under **section 7(1)** of the **Arbitration Act** pending arbitration.

10. Learned counsel for the Plaintiff also relied upon the proviso to **section 12** of the **Civil Procedure Act, Cap 21** (the **Act**). He also pointed out that the Defendant's head office is in Nairobi and that therefore it is deemed to do business in Nairobi. In his view the suit is properly before the High Court at Nairobi.

11. For the Defendant it was submitted that the suit land is in Kwale County within the immediate jurisdiction of the High Court at Malindi! He also submitted that the arbitration clause was limited in terms of time-lines and that those time-lines were not met. Learned counsel for the Defendant further submitted that because of that failure to meet the arbitration time-lines the arbitrator would not have jurisdiction and the suit would ultimately be tried in court. In such event the trial court may have to visit the suit land regarding the issue of developments in the land. The High Court at Malindi would be best suited in these circumstances.

12. It was also submitted that in the event of a trial the Defendant's witnesses would come from the Defendant's regional office at Malindi; not Nairobi.

13. I have considered these rival submissions. Article 159(2)(C)of the Constitution relied upon by the Plaintiff states –

**“(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles**

(a) ...

(b) ...

**(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);**

(d) .....

14. With respect, learned counsel for the Plaintiff missed the point here. The forum in question here is whether the Plaintiffs should have filed its suit at the **High Court, Malindi** or at the **High Court, Nairobi**. It is not in dispute that the agreement between the parties contains an arbitration clause.

15. Section 12 of the 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.”**

16. The present suit is for the **“determination of any other right to or interest in immovable 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.

17. 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.

18. 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.

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

**“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.”**

20. 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.

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

**DATED AND SIGNED AT NAIROBI THIS 6<sup>TH</sup> DAY OF JUNE 2013**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF JUNE 2013**