REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Civil Suit 684 of 2006

TWIGA CHEMICALS INDUSTRIES LIMITED……PLAINTIFF

VS

GAME RANCHING LMITED……..……DEFENDANT

RULING

1.This ruling relates to an oral application made by counsel for the Defendant on 14th May 2012 when an application by the Plaintiff dated 18th January 2012 came up for highlighting of written submissions.

2.The application sought orders that this suit be transferred to the Environmental & Land Division of the High Court on grounds that the subject matter of the suit was ownership of a parcel of land known as L.R. No. 7590 /4. Counsel for the Defendant KethiKilonzo argued that there were no commercial issues arising for determination by this court and therefore that this court lacked jurisdiction to hear the matter.

3.The application was opposed by counsel for the Plaintiff Mr. King'ara who submitted that the application was mischievous and an excuse by the Defendant to impede progress of this matter. He argued that the Defendant had for the last six years submitted to the jurisdiction of this court and that a judge in any Division of the High Court had jurisdiction to hear the matter.

4.I have considered the application and the oral arguments made by counsel for both parties.

5.By a Circular issued in November 1997, the then Chief Justice A.M. Cockar gave directions on what matters were to be deemed to be commercial matters suited for trial by the Commercial Division of the High Court. The said matters were listed as follows:

a)Injunction proceedings against realization of securities whether debentures or charges;

b)Company matters and applications including winding up excluding cases in which a company is suing or is being sued as an entity;

c)Bankruptcy matters;

d)Matters relating to arbitration

e)Intellectual property matters;

f)Claims for the recovery of unsecured debts due to a bank or other financial institution;

g)Such other matters as are certified by a Judge of the Commercial Court as being suitable for determination in the Commercial Court having regard to the amount involved; the need for speedy hearing and the nature of the case.

6.Although on the face of the above classification the matter before the court does not fall within the substantive categories of commercial matters, I find the application made by counsel for the Defendant to be devoid of merit and a blatant abuse of the court process given that this suit was filed way back on 13th December 2006 and that the same firm of advocates now representing the Defendant is the same firm of advocates that entered appearance on 1st February 2006 and filed defence on 13th February 2006. In the defence no averment was made as to the contention that the claim was filed in the wrong Division of the High Court. Neither did the Defendant raise the concern in the subsequent papers filed in court and in the many appearances and submissions that counsel have made in court, includingthe submissions filed in the instant application before the court.

7.This court takes the view that the sheer time lapse and progression of this suitfrom the date of filing of the suit until now estops either party from raising the elementary claim that this court has no jurisdiction to hear the matter. This case in my humble view is a proper case for invocation of the omnibus category set out in paragraph 5(g) of this ruling as the court in its assessment finds that a transfer of the suit at this stage where parties have even filed and exchanged written submissions would impede speedy determination of the matter.

8.In any case, Divisions of the High Court are administrative arrangements that are put in place to streamline delivery of justice in a coordinated manner and do not go into the question of whether a particular judge has jurisdiction to hear and determine a matter irrespective of the Division where that matter ideally ought to be tried. A judge is a judge irrespective of the Division of the High Court one currently serves.

10.For the above reasons, the application seeking transfer of this suit to the Environment and Land Division of the High Court is hereby dismissed.

11. IT IS SO ORDERED

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17th DAY OF MAY 2012.

<span style="\"font-size:" 16pt;="" font-family:="" "arial","sans-serif";\"="" lang="\"EN-US\"">JUDGE