



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUSIA

Miscellaneous Civil Application 185 of 2011

JOHN KAYELI OLAKA

**APPLICANT
VERUS**

ALFRED A. OLAKA

LAWRENCE M.

OLAKA

HOSKIN INDIMULI OLAKA

RESPONDENTS

AND

ISAAC WANYONYI

MASINDE

GEORGE BIKETI

WAFULA

INTERESTED PARTIES

R U L I N G

The applicant filed a Notice of Motion pursuant to the provisions of, *inter alia*, **Sections 17, 18 (1) (b) (i) and 2** of the **Civil Procedure Act** seeking to have a suit filed before the Kimilili Senior Resident Magistrate's Court (**Land case No.22 of 2008, John Olaka versus Alfred Olaka & Another**) transferred to this court or any other court for hearing and final determination. From the grounds in support of the application, it was apparent that the applicant was moved to make the application because the applicant's advocate felt that the trial magistrate was hostile and would not accord justice to the applicant. The applicant initially filed the application before the High Court sitting at Kisumu before the application was transferred to this court. On perusal of the application, this court noted that most of the properties that are the subject matter of the suit between the applicant and the respondents (and also to some extent the Interested parties who are seeking to be enjoined as parties to this suit) are situated in Bungoma County.

At the hearing of the application, this court requested the counsel for the parties to address this court on

the question whether this court had jurisdiction to hear and determine the application in light of the fact that most of the properties that are the subject matter of the application are situated within Bungoma County. Mr. Miano submitted that this court, being a High Court, had unlimited territorial and pecuniary jurisdiction. In his view, this court has jurisdiction to hear and determine the application. On the other hand, Mrs. Munialo for the interested parties and Mr. Ashioya for the respondent, were of the view that the court with the requisite jurisdiction to hear the application was the High Court sitting at Bungoma.

After carefully considering the submissions made in that regard, this court notes that whereas the High Court has unlimited territorial and pecuniary jurisdiction, there are other rules which guide the court when it comes to the determination of the question where a suit should actually be filed. For instance, although the High Court has unlimited jurisdiction, **Section 11** of the **Civil Procedure Act** requires any person wishing to file suit to file such suit in the court of the lowest grade competent to try it. Further, **Section 12** of the said **Act** provides that a suit should be filed, in case of immovable property, where such property is situate. Furthermore, **Section 15** of the **Act** requires any other suit to be filed where either the defendant resides or where the cause of action arose. This court will therefore not assume jurisdiction merely because it has unlimited territorial and pecuniary jurisdiction to hear any case.

As stated earlier in this ruling, most of the parcels of land that are the subject of litigation between the parties to this application are situate in Bungoma County. The suit that the applicant seeks to have transferred to this court, was filed before the Kimilili Senior Resident Magistrate's court. In **Gazette Notice No.299 of 19th January 2007**, the then Chief Justice delineated the areas of jurisdiction of various High Courts within the Republic of Kenya. In the said notice, the Magistrate's Courts within the then Bungoma, Teso and Mt. Elgon districts were placed under the jurisdiction of the High Court sitting at Bungoma. The Kimilili Senior Resident Magistrate's Court therefore falls within the territorial jurisdiction of the High Court sitting at Bungoma.

It is therefore clear that the present application ought to have been filed before the High Court sitting at Bungoma and not before this court. In the circumstances therefore this court, in exercise of its inherent jurisdiction, and on its own motion, hereby transfers this suit to the Bungoma High Court for hearing and final disposal. For avoidance of doubt, this court has deliberately not dealt with the merits or otherwise of the applicant's application. In the same vein, the court has not addressed the objection by the applicant to the inclusion of the interested parties as parties to this application. That issue will also be addressed by the High Court sitting at Bungoma. Costs shall be in the cause.

DATED AT BUSIA THIS 15TH DAY OF MAY 2012.

L. KIMARU
J U D G E