



REPUBLIC OF KENYA

High Court at Kisumu

Miscellaneous Civil Application 240 of 2010

JAPHETH ONYANGO OMOLO.....APPLICANT

VERSUS

SALLY ANYANGO OGOLARESPONDENT

RULING

The applicants Notice of Motion dated 12th August 2012 prays that suit No. 4573 of 2009 at Chief Magistrate's Court at Nairobi (Milimani Commercial Court) be transferred to Principal Magistrate Court at Nyando for hearing and final determination. The same is supported by the applicant's affidavit sworn on 12th August 2012.

The gist of the application is that the subject matter in issue, that is land, is situate at Ahero within the geographical distance and jurisdiction of the Nyando Court.

The applicant has further argued that most of the witnesses to be called do reside at Ahero and not Nairobi.

The respondent has opposed the application vide the replying affidavit sworn on 5th November 2010. The respondent's contention is that the issue at hand is a performance of a contract and in particular payment of the sum Kshs. 250,000 which has nothing to do with the land.

Section 15 of the Civil Procedure Act which deals with the filing of suits states:-

“15 Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction.

- a) The defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business or personally works for gain or**
- b) Any of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business or personally works for gain, provided either the leave of the court is given or the defendants who do not reside or carry on business or personally work for gain as aforesaid acquiesce in such, or**
- c) The cause of action, wholly or part, arises”**

I have perused the plaint as well as the sale agreement attached to the respondent's replying

affidavit. Both the applicant as well as the respondent addresses read Nairobi at the time of the signing the agreement.

Further the same was drawn by **M/s Eboso & Wandago Advocates** whose addresses are indicated to be Nairobi.

On perusing the plaint the issues at stake is the sum of Kshs. 250,000 and not the land parcels number **East Kano / Amira Scheme / 1110 and 1111.**

In the premises I do not find the application meritorious. The Chief Magistrate's Court at Milimani Nairobi can easily determine the same. I disallow it with costs to the respondent.

Dated, signed and delivered at Kisumu this 14th day of November 2012.

**H.K. CHEMITEI
JUDGE**

In the presence of:

N/A for Applicant

P. J. Otieno for Respondent

HKC/aao