



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.413 OF 2010

EMOM TEA ESTATE
LTD.....PLAINTIFF

VERSUS

YOBES ONSANDO
ONDIEKI.....DEFENDANT

R U L I N G

1. By a notice of motion dated 15th September, 2010, Yobes Onsando Ondieki who is the defendant seeks an order that the trial of the plaintiff's suit and all applications in respect thereof do take place in Eldoret District Registry of the High Court. The applicant contends that the suit property which is Eldoret Municipality Block 9/2558, is situated in Eldoret, and the applicant and applicant's witnesses all reside in Eldoret.

2. The plaintiff Emom Tea Estates Ltd objects to the application. Counsel for the plaintiff has submitted that there is no legal provision for transfer of a suit from one High Court to another. Counsel further submits that the cause of action which is anchored on a guarantee arose in Nairobi where the guarantee was signed. It was further maintained that the proceeds of the sale of the suit property are being held by an advocate in Nairobi.

3. I have given due consideration to this application. I have also carefully perused the pleadings. It is clear to me that the subject of the suit is land parcel known as Eldoret Municipality Block 9/2558 which is situated in Eldoret. The respondent is challenging the transfer of this land parcel to the defendant. It is evident from the agreement of sale exhibited by the respondent as an annexure to the affidavit sworn in support of the originating summons that the defendant resides in Eldoret and signed the agreement in respect of the sale of the suit property in Eldoret. There is therefore justification for this court to act in accordance with Order XLVI Rule 5 of the Civil Procedure Rules 2010) by directing that the proceedings in regard to this suit be conducted in Eldoret as it would be more convenient taking into account the circumstances of the matter.

4. Accordingly I give directions that the Deputy Registrar of this court shall forward this file to Eldoret District Registry for the proceedings to continue in Eldoret. Costs shall be in the cause.

Dated and delivered this 4th day of February, 2011

H. M. OKWENGU

JUDGE

In the presence of: -

Gachie H/B for Ms Githii for the plaintiff/respondent

Nyachero for the defendant/applicant

B. Kosgei - Court clerk