



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION – MILIMANI
CIVIL CASE NO. 610 OF 2010

**KOBIL PETROLEUM
LIMITED.....PLAINTIFF**

VERSUS

**POSTA INVESTMENT CO-OPERATIVE SOCIETY LIMITED.....1ST
DEFENDANT**

**ALFAWAYS LIMITED.....2ND
DEFENDANT**

R U L I N G

This application is brought by a Notice of Motion dated 21st October, 2010 and taken out under **Sections 1A; 1B and 3A and Order XLVI (sic) of the Civil Procedure Rules**. By the application, the Applicant seeks two orders –

1. *That this suit be transferred to the High Court, Central Registry.*
2. *That the costs of this application be provided for.*

The application is supported by the annexed affidavit of John

Ochanda, the Secretary of the 1st Defendant Society, and is based on the grounds that –

- (a) *This suit is not a commercial dispute and ought to be transferred to the appropriate Division of the High Court.*
- (b) *The Land and Environmental Division of the High Court at the Central Registry is the proper forum to hear this suit.*

(c) It will be convenient to the parties and witnesses for the suit to be heard by the Land and Environmental Division of the High Court.

The application is opposed by way of a replying affidavit sworn by David Ohana, the General Manager of the Plaintiff/Respondent in this action. In the said affidavit, he deposes that it is false for the Applicant to suggest that this is not a commercial dispute. He further avers that the dispute is over a commercial property leased to the Defendants for commercial use, and that it is therefore a commercial dispute.

At the hearing of the application, Mr. Ngatia for the Applicant submitted that the dispute between the parties arose from a lease between the Plaintiff and the 1st Defendant and that what we have here is the relationship of Landlord and Tenant. The dispute between the parties therefore, was not commercial. He therefore requested the Court to exercise its power and transfer the case for management by the Land and Environmental Division who are better suited to hear disputes between Landlords and Tenants.

Opposing the application, Mr. Ochieng Oduol, holding brief for Mr. Oyatsi for the Respondent, submitted that the 1st Defendant was the previous owner of the property. The lease in question was registered in favour of the Plaintiff and provided an option to purchase. That was a contract, and there has been a breach of that contract, and that was why the parties had come to Court.

I have considered the application and the arguments of Counsel for the respective parties. The nature of the dispute between the parties emanates from the relationship of the 1st Defendant and the Plaintiff as Landlord and Tenant, respectively. Matters relating to the sale and purchase of land are, administratively, the preserve of the Land and Environmental Division of the High Court. Although this Court has, theoretically, constitutional jurisdiction to deal with the matter between the parties, administratively, I am bound to transfer the matter to the Division of this Court which deals with land issues.

I accordingly direct that this suit be and is hereby transferred to the Land and Environmental Division of the High Court at the Central Registry, Nairobi.

Costs in the cause.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 15th day of December, 2010.

L. NJAGI

JUDGE