



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Civil Case 61 of 2009**

**DR. DAVID WARUIRU NGOTHO.....PLAINTIFF**

**VERSUS**

**BETTY M. ABONYO OYUGI .....1<sup>ST</sup> DEFENDANT**

**DAVID OGOT OYUGI.....2<sup>ND</sup> DEFENDANT**

**DOREEN ARIBETA OYUGI.....3<sup>RD</sup> DEFENDANT**

**BEATRICE AKINYI AMENYA.....4<sup>TH</sup> DEFENDANT**

**SAMUEL AYUDO OGANGO.....5<sup>TH</sup> DEFENDANT**

**CHRISTOPHER ONYANGO OYUGI.....6<sup>TH</sup> DEFENDANT**

**ARTHUR ODUOR OYUGI.....7<sup>TH</sup> DEFENDANT**

**DOUGLAS ODHIAMBO OYUGI.....8<sup>TH</sup> DEFENDANT**

**JOSHUA ONYANGO OGANGO.....9<sup>TH</sup> DEFENDANT**

**JOB OKUNA OYUGI.....10<sup>TH</sup> DEFENDANT**

**MARY AKUMU OYUGI.....11<sup>TH</sup> DEFENDANT**

**RULING**

The first, second, fourth, fifth and sixth defendants have applied under **Sections 3A, 12 and 15** of the **Civil Procedure Act** as well as **Order 7 Rule 9** of the **Civil Procedure Rules** for an order that the plaint dated 18<sup>th</sup> February 2009 and filed in this Honourable court on the same day be returned to the plaintiff to be presented to the Central Registry, High Court Nairobi or alternatively that this suit be transferred to the Central Registry, High Court Nairobi for hearing and final determination. The application is based on the grounds that this suit involves the determination of rights in the property known as House Nos. 3, 4, 5, 6 and 7 standing on L.R. No. 209/3092 situate in the City of Nairobi where the agreements, the subject matter of this suit, were to be performed and completed; that save for the third defendant who resides at Rongo, all the other defendants reside in Nairobi and that except for the first and third defendants the

other defendants are not privy to the agreements the subject matter of this suit.

The application is supported by the 7<sup>th</sup> to 11<sup>th</sup> defendants. It is, however, strongly opposed by the plaintiff. Relying on the replying affidavit of the plaintiff, Mr. Karanja Mbugua submitted that the High Court has no jurisdiction to transfer a suit from itself to another High Court. He also submitted that this application is not made in good faith. He said this matter having gone to Nairobi during the vacation, the applicants should have arrested the file there instead of letting it come to Nakuru and then apply to have it transferred back

to Nairobi. Moreover, he concluded, the agreements the subject matter of this suit were entered into at Nakuru and that the plaintiff is now not seeking specific performance but a refund of the deposit which was paid in Nakuru.

Doreen Aribeta Oyugi, the 3<sup>rd</sup> defendant who is acting in person opposes the transfer to Nairobi. She argues that all the elderly defendants reside in Rongo and those who are in Nairobi are youngsters who can travel anywhere. In her view the suit should be transferred to the High Court at Kisii.

I have considered these rival submissions. That the High Court has countrywide jurisdiction is not in doubt. But for purposes of order so that we do not find a party filing a suit at one end of the country in respect of property situate at the other end and for the convenience of the parties the Honourable The Chief Justice issued a practice direction (Gazette Notice No.1756 of 27<sup>th</sup> February 2009) that suits should not be filed at the convenience of the plaintiffs but in accordance with the provisions of **Sections 11 to 18 of the Civil Procedure Act. Section 15 of the Civil Procedure Act** gives guide lines as to where suits should be filed. The most important of those guidelines are where the cause of action arose or where the defendant resides.

It is common ground in this case that most of the defendants reside in Nairobi. Much as I sympathise with the 3<sup>rd</sup> defendant who is quite old, I cannot transfer this suit to Kisii as she demands.

Contrary to the defendants' contention that there is no prove that the agreements the subject matter to this suit were entered into at Nakuru, it is clear from the agreements themselves that they were drawn by M/S Ndeke Gatumu & Co. Advocates based in Nakuru and executed before Mr. Ndeke Gatumu himself. I therefore find that the cause of action arose at Nakuru. In the circumstances the plaintiff was within his rights in filing this suit in Nakuru. And as the claim in this suit is for the refund of the purchase price and not for specific performance, I find no good reason for transferring this suit to Nairobi. Consequently I dismiss this application with costs.

DATED and delivered this 12<sup>th</sup> day of June, 2009.

**D. K. MARAGA**

**JUDGE.**