



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 2361 of 2007

PAUL KIRWA PLAINTIFF

VERSUS

**JACKSON KIPLAGAT ARAP MELI
(sued as the Administrator to the estate of the Late
KEMELI KOGO SIMEON) 1ST DEFENDANT**

**ROSELYNE CHEMAIYO KENEI
(sued as the Administrator to the estate of the late
ELIJAH KIPTARUS KENEI 2ND DEFENDANT**

**ANNA JEPKOECH TENAI
(Sued as the Administrator of the estate
of the late MICHAEL MAKAKWEN ARAP TENAI 3RD DEFENDANT**

**DINA JEPKOROIR TENAI
(Sued as the administrator of the estate
of the MICHAEL MALAKWENA RAP TENAI 4TH DEFENDANT**

COMMISSIONER OF LANDS 5TH DEFENDANT

THE HON. ATTORNEY GENERAL 6TH DEFENDANT

RULING

APPLICATION TO TRANSFER SUIT TO COURT

HIGH COURT AT KITALE SECTION 12 AND 17

CIVIL PROCEDURE RULES

1. The suit herein was filed in the High Court of Kenya at Nairobi. The parties appear to all come

from Kitale. Ideally this suit under section 12 should have been filed in the High Court of Kenya at Kitale.

2. Defendants 1,2,3 and 4 all wish for this suit to now be transferred to Kitale for hearing and determination. They rely on section 12 and 17 of the Civil Procedure Act.

3. Section 12 speaks of suits to be instituted where subject matter is; whilst section 17 deals with the power of the court to transfer suits which may be instituted in more than one court.

4. It is on the grounds that the parties reside in Kitale that the suit is to be transferred.

5. The plaintiff applicant was absent and did not appear during the application. No grounds were in effect filed by the plaintiff.

III: Opinion.

6. Section 17 Civil Procedure Act deals with the subordinate courts. Section 12 should have ideally been followed and suits filed in the nearest court.

7. The option that the parties would have had was during summons for direction. This was when the application would have stated the time, place and hearing of a suit. Since summons for directions was done away with there is no option but for the withdrawal of the suit and filing of a fresh suit at Kitale.

8. There is only one High Court of Kenya.

9. I hereby decline to transfer this suit and order that it proceeds to hear at Nairobi. As the plaintiff choose to file it in Nairobi, he will bear the costs of travel and substances allowance of all the witnesses who will attend court.

10 The costs of this application will be in the cause.

DATED THIS 8TH DAY OF MAY 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

M/s Wilfred C. Odhiambo instructed by Wilfred C. Odhiambo & Co. Advocates for the plaintiff- present

B. Moboso holding brief for A. Kidiavai for Kidiavai & Co. Advocates for the 1st -4th defendant/Respondents- present

K. Onyuso instructed by K. Onyuso & Co. Advocates for the 5th and 6th defendants/respondents - present