



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 605 of 2003**

**LILIAN WAMBUI NJOROGE & 5 OTHERS.....PLAINTIFFS**

**VERSUS**

**JOHN NJUGUNA NJOROGE.....DEFENDANT**

**R U L I N G**

This claim arises out of a dispute over family land between the mother and her 5 sons against the Defendant another son. The land is situate at South Kinangop Nyandarua District of the Central Province.

On 19<sup>th</sup> June 2008 I made an order that the suit be transferred to Nyeri High Court for hearing and determination. But Mr. Njoroge on 27<sup>th</sup> June 2008 filed a notice of motion under certificate of urgency seeking orders that the said order transferring the suit to Nyeri High Court be set aside. This being a dispute over land, it falls squarely within the provisions of Section 12 of the Civil Procedure Act Cap. 21 Laws of Kenya which provides:

“12” Subject to the pecuniary or other limitations prescribed by any law, suits –

- (a) for recovery of immovable property, with or without rent or profits;
- (b) for the partition of immovable property;
- (c) for the foreclosure, sale redemption in the case of a mortgage of a charge upon immovable property;
- (d) for the determination of any other right to or interest in immovable property;
- (e) for compensation for wrong for immovable property;
- (f) for the recovery of immovable property actually under distraint or attachment.

Where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate.”

Further the provisions of Order XLVI of the Civil Procedure Rules are very clear Nyandarua District falls under Nakuru High Court. I also refer to Legal Notice Number 300 of 19<sup>th</sup> January 2007 whereby all High Court stations are directed to observe the provisions of Order XLVI of the Civil Procedure Rules with regard to the filing of and hearing of suits in the High Court Central Registry and in the District Registries and ensure their compliance and enforcement.

For the above stated reasons the Applicants’ notice of motion dated 26<sup>th</sup> June 2008 succeeds and this court’s order dated 19<sup>th</sup> June 2008 transferring the suit to Nyeri High Court is set aside and substituted with an order that the suit be transferred to Nakuru High Court for hearing and determination.

Dated and delivered at Nairobi this 8<sup>th</sup> day of July 2008.

**J. L. A. OSIEMO**

**JUDGE**