



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

**Civil Case 82 of 2006**

**EDWARD WAFULA YANDA ..... PLAINTIFF**

**V E R S U S**

**BOAZ MUSUCHA WAKHWAKU .....1<sup>ST</sup> DEFENDANT**

**MARK MUFUMU WAKHWAKU .....2<sup>ND</sup> DEFENDANT**

**MOSES MWAMI WAKHWAKU .....3<sup>RD</sup>  
DEFENDANT**

**R U L I N G**

The defendants have invoked the provisions of *sections 34, 12 and 15* of the Civil Procedure Act, as read together with *Order 46 rule 5* of the Civil Procedure Rules, as a basis for seeking the transfer of this case to the High Court at Bungoma.

The defendants said that the subject matter of the dispute was situated at Misikhu Location, Webuye Division, Bungoma East District.

They also said that all the witnesses are resident within Bungoma East District.

In support of their contention that the subject matter of the dispute was situated within Bungoma, the defendants placed before the court, a certificate of official search, signed by the Land Registrar Bungoma, showing that the property was registered in the name of the plaintiff herein.

Even though the plaintiff was served with the application, he did not file any affidavit in reply. He also failed to attend court either in person or through his advocate, on the occasion when the application came up for hearing.

In the circumstances, the application and the affidavit in support thereof are uncontroverted.

Accordingly, I find and hold that the subject matter of the dispute is situated in Bungoma East District, and also that all the witnesses are resident within that District. It will therefore be in the interest of justice that the case be heard and determined at the High Court at Bungoma.

By virtue of the provisions of *section 12* of the Civil Procedure Act a suit to obtain relief respecting immovable property, where the relief sought can be entirely obtained by personal obedience should be instituted either in the court within the local limits of whose jurisdiction the property is located, or within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business or personally works for gain.

In the plaint herein, the plaintiffs did assert that the defendants were resident on the suit property. Although the defendants deny that contention, in their defence, they make it clear that they reside in Bungoma District. Therefore, not only is the property located in Bungoma District, but the defendants are also resident in that District.

In the event, there is no reason to warrant having the case heard and determined at Kakamega.

I order that this case be transferred to the High Court at Bungoma, for hearing and determination. The costs of the application are awarded to the defendants.

*Dated, Signed and Delivered at Kakamega this 26<sup>th</sup> day of November 2008*

**FRED A. OCHIENG**

**J U D G E**