



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

**Civil Suit 1475 of 20070**

**IRARU HOLDINGS LIMITED..... PLAINTIFF**

**VERSUS**

**CANADIAN FOODGRAINS BANK.....1<sup>ST</sup> DEFENDANT**

**TRANSAMI(KENYA) LIMTIE**

**(now known as SDV TRANSAMI (K) LTD.....2<sup>ND</sup> DEFENDANT**

**SOCIETE GENERALE DE. SURVEILLANCE**

**(SGS) KENYA LIMTIED..... 3<sup>RD</sup> DEFENDANT**

**RULING**

The Plaintiff has by Notice of Motion dated 27<sup>th</sup> November, 2006 sought a transfer of this suit to the High Court, Central Registry Nairobi for hearing and determination. The application is expressed to be brought under Section 3A of Civil Procedure Act the Judicature Act and all enabling provisions of the law. The main ground cited as basis of this application is that the issues for determination in the suit are environmental in nature.

The application was opposed. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants have filed grounds of opposition. The Advocate for the 1<sup>st</sup> Defendant Mr. Gitonga, prosecuted the grounds of opposition filed on behalf of both the 1<sup>st</sup> and 3<sup>rd</sup> Defendant. Mr. Kusewo for the Plaintiff argued that the Hon. Chief Justice by Gazette Notice No. 301 of 19<sup>th</sup> January, 2007 created the Land and Environmental Division of the High Court, and in the same notice gave an order directing that all matters already filed could be transferred to that division. Counsel submitted further that the instant suit, filed in 2000 when the Division did not exist, raises environmental issues and ought to be transferred to that court. Counsel referred the court to the prayers in the plaint as proof of this contention.

Mr. Gitonga for the 1<sup>st</sup> Defendant opposed the application and relied on all grounds of opposition filed by both the 1<sup>st</sup> and 3<sup>rd</sup> Defendant. In his brief address, counsel submitted that all the prayers in which environmental issues were raised in the plaint, were struck out by Kasango, J on 26<sup>th</sup> January, 2007. Mr. Gitonga submitted that of the little that is left of the plaint, only the prayers seeking damages of a commercial nature were left. Counsel further submitted that besides all else, the main suit had a hearing date this year of 5<sup>th</sup> December. Further more, Counsel submitted, the Hon. the Chief Justice made the transfer of suits to the Land and Environmental Division discretionary. Mr. Gitonga submitted that since the suit has been heard and finalized in part it should not be moved. Mr. Gitonga submitted that the suit against the 2<sup>nd</sup> Defendant was finalized.

I have considered the varying submissions made by both Counsels. Gazette Notice. No. 301 of 19<sup>th</sup> January 2007, item 3 provides:

*“The Land and Environmental Law Division of the High Court at Nairobi will have its own registry and it shall*

*determine the categorization of the matters that may be lodged and heard in the Division. The High Court may order that Land and Environmental Law matters already filed in the other divisions of the High Court at Nairobi shall be transferred, heard and determined at the Land and Environmental Law Division”.*

The Notice by the Hon. the Chief Justice is very clear. It gives the High Court a discretion to transfer or not to transfer, to the Land and Environmental Division, matters touching on Land and Environmental Laws.

The matter before me has been before this court since it was filed in 2000. The Plaintiff sued three Defendants, but since then, the case against the 2<sup>nd</sup> Defendant has been determined. That is not in dispute. It is not disputed that after a successful application by the 3<sup>rd</sup> Defendant, large sections of the plaint were also struck out.

The matter which I consider the most fundamental and which dictates against the exercise of the discretion to order a transfer, is the fact there is already a hearing date for the main suit. I do not think it will be judicious to order a transfer of this matter to the Central High Court registry, in order for it to be heard by Judges in the Law and Environmental Division. Hearing dates are not easy to come by due to pressure of work in all High Court Stations. In my humble view it will only cause further delay to transfer this matter as requested. It should be allowed to be finalized in this court.

Having come to that conclusion I decline to grant the order sought consequently the Application stands dismissed with costs to the Respondents.

**Dated at Nairobi this 26<sup>th</sup> day of October, 2007.**

**LESIIT, J.**

**JUDGE**

Amani for Applicant

Ms. Okumu for 3<sup>rd</sup> Defendant

H/brief Chache Odera for 1<sup>st</sup> Defendant

**LESIIT, J.**

**JUDGE**