



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

**Civil Suit 1082 of 2006**

**PRIVATE DEVELOPERS**

**COMPANY LIMITED .....PLAINTIFF/RESPONDENT**

**VERSUS**

**REBECCA NGONYO .....1<sup>ST</sup> DEFENDANT/APPLICANT**

**SAMUEL KAMAU MACHARIA.....2<sup>ND</sup> DEFENDANT**

**RULING**

I have before me a Notice of Motion dated 1<sup>st</sup> November 2006 which is premised under provisions of Order L Rule 1 of Civil Procedure Rules, sections 3A and 12 of the Civil Procedure Act and all other enabling provisions of the law.

It seeks the prayers that the suit be transferred to the High Court of Kenya at Nakuru for hearing and determination.

The prayer of this transfer is sought on the grounds of convenience, expediency, costs and broader interest of justice.

It is evident that the subject matter of the suit which is an immovable property is situate at Nakuru, the Defendant is at Nakuru, the Plaintiff also has business at Nakuru, all the acts that have caused the Plaintiff to come before the court were performed and/or executed at Nakuru, the occupants of the suit property also are at Nakuru and who are expected to give evidence before this court also reside at Nakuru.

It is submitted that section 12 of Civil Procedure Act provides that subject to pecuniary or other limitations prescribed by any law, suits for the claims in respect of immovable property shall be instituted in the courts within the local limits of whose jurisdiction the property is situate. The meaning of '*court*' in section 2 includes the High Court or a Subordinate Court acting in the exercise of its civil jurisdiction. Thus the cursory submission by the Mr. Kamau, the learned counsel for the Plaintiff, that the said section applies only to Subordinate Courts cannot be tenable.

It is stressed that by filing the suit at Nairobi. The Plaintiff has not shown any good reasons for doing so and which shall result in unnecessary hardship to the Defendant. Moreover, it is contended and not responded or controverted that the Plaintiff shall not suffer any prejudice if the suit is transferred to High

Court at Nakuru. On the contrary, it is pointed out that the agents and servants of the Plaintiff are also residing at Nakuru.

The Defendant/Applicant urged this court to exercise the court's inherent powers to avoid unnecessary hardship which can be termed as broader interest of justice.

The Plaintiff's counsel opposed the application on points of law and have filed grounds of oppositions dated 29<sup>th</sup> June, 2007.

It is submitted, very forcefully, by Mr. Kihara, the learned counsel for the Plaintiff, that this court has no jurisdiction to grant the prayer and the said prayer presupposes that the High Court in Nairobi and that in Nakuru are two district courts with district territorial jurisdiction.

He relied on section 3(1) of the Judicature (Act Cap 8) and section 60 and 61 of the Constitution.

I am at a loss as to why he had mentioned section 61 of the Constitution which stipulates the provisions as regards appointment of the Judges of the High Court. No further explanation or comment was made to enlighten this court as to why section 61 was relied upon by the learned counsel.

Be that as it may, section 3(1) of the Judicature Act provides.

***“3. (1) The jurisdiction of the High Court, the Court of Appeal and of all subordinate courts shall be exercised in conformity with—***

***(a) the Constitution;***

***(b) subject thereto, all other written laws, including the Acts of Parliament of the United Kingdom cited in Part I of the Schedule to this Act, modified in accordance with Part II of that Schedule;***

***(c) subject thereto and so far as those written laws do not extend or apply, the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 12<sup>th</sup> August, 1897, and the procedure and practice observed in courts of justice in England at that date;***

***but the common law, doctrines of equity and statutes of general application shall apply so far as the circumstances of Kenya and its inhabitants permit and subject to such qualifications as those circumstances may render necessary.”***

Thus the Jurisdiction of the High Court is to be exercised in conformity with the Constitution and subject thereto, with all other written laws and subject thereto the substance of the Common law, doctrine of Equity and statutes of general application as stipulated in the said section.

Section 60(1) of the Constitution stipulates:

***“60 (1) There shall be a High Court which shall be a superior court of record, and which shall have unlimited original jurisdiction in civil and such other jurisdiction and powers as may be conferred on it by this Constitution or any other law”.***

I shall also quote section 60(5) of the Constitution which states:

***“Section 60(5): The High Court shall sit at such places as the Chief Justice may appoint”.***

Order XLVI Rule (1) of Civil Procedure Rules states —

***“Every suit in the High Court may be instituted at the Central Office of that court situate in Nairobi or***

***in a District Registry.”***

Rule 2 of the said Order has stipulated the District Registries wherein Nakuru is one of them.

Rule 2(2) of the said Order grants power to the Chief Justice to add or delete any of those registries.

I go further and quote Rules 5(1) and (2) of Order XLVI of Civil Procedure Rules which stipulates specifically: namely

***“5. (1) Every suit whether instituted in the Central Office or in a District Registry of the High Court shall be tried in such place as the court may direct; and in the absence of any such direction a suit instituted in the Central Office shall be tried by the High Court sitting in the area of such Central Office and a suit instituted in a District Registry shall be tried by the High Court sitting in the area of such District Registry.***

***(2) The court may of its own motion or on the application of any party to a suit and for cause shown order that a case be tried in a particular place to be appointed by the court:***

***Provided always that in appointing such particular place for trial the court shall have regard to the convenience of the parties and of their witnesses and to the date on which such trial is to take place, and all the other circumstances of the case.”***

Thus there is specific provision which gives the jurisdiction at the Central Registry to direct the place of trial considering the convenience of the parties and of their witnesses.

I do further observe that by making the District Registries, the intention was to the hearing of a case without much delay or costs to the litigants.

This is what I am asked to do.

Considering the facts and circumstances of this case, when the Plaintiff also has not shown any prejudice, I shall have no hesitation to direct that the suit be transferred to High Court at Nakuru to be heard and determined.

Lastly, the two cases cited by the learned counsel for the Plaintiff were determining the issue of the jurisdiction of the High Court. I shall have no reason not to agree that the jurisdiction of the High Court is throughout Kenya and the Defendant/Applicant is not alleging that this court has no jurisdiction to hear and determine this case.

Thus I do find the **(H.C.C.S. No. 2155 of 2000 U.R) Augusta Mutitu Njeru vs Kenya Bus Services Ltd. and H.C.C.S. No. 680 of 2002 (Vitafoam Products Ltd vs Palison Furnishing Ltd)** are not relevant to the facts of this application and issues raised herein.

The upshot of all the above is that I grant prayer asked for and direct that this suit be transferred to the High Court of Kenya at Nakuru for hearing and determination.

The cost of this application be in the cause.

**Dated, Delivered and Signed at Nairobi this 15<sup>th</sup> day of October, 2007.**

**K.H. RAWAL**

**JUDGE**