

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Suit 626 of 2005

ENG. JONAS JOHN MYOYA t/a MYOMUWE CONSTRUCTION CO.
.....PLAINTIFF

VERSUS

CHEPTAIS FARMERS CO-OPERATIVE SOCIETY
LTD.....DEFENDANT

R U L I N G

The plaintiffs' complaint clearly indicates that the defendant's address of service is P O Box 42 Cheptais.

The defendant has moved this court by a Notice of Motion seeking for the transfer of this suit to Bungoma High Court. In support of the application, defence counsel submitted that Cheptais is within the Bungoma area and that accordingly the suit ought to be heard by the High Court at Bungoma. Defence further stated that the defence witnesses are based at Cheptais.

The plaintiff did not contradict the defendant's counsel's submissions but opposed the application on the basis that it is incompetent for having relied on order 44 of the Civil Procedure Rules, which order relates to review applications. Plaintiff's counsel argued that the defendant failed to state the law upon which the application was based.

Section 15 of the Civil Procedure Act provides that suits should be instituted where the defendant resides or where the cause of action arises. Clearly from the uncontradicted information by the defendant, the defendant resides at Cheptais and the cause of action arose within the local limits of Bungoma High Court.

To respond to the defendant's objection, the court is of the view that the defendant's application is not defeated by the quote of the wrong rule of the civil procedure rules.

The court will therefore not hesitate to grant the prayers sought by the defendant for indeed to grant those prayers will lead to this suit complying with section 15 of the Civil Procedure Act.

The orders of this court are: -

- (1) That this suit is hereby transferred to Bungoma High Court to be tried and determined thereof.**
- (2) That the costs of the application dated 7th November 2005 are awarded to the defendant.**

MARY KASANGO

JUDGE

Dated and delivered this 29th March 2006.

MARY KASANGO

JUDGE