



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

Civil Case 936 of 2004

ELKANAH ORARE OTUNDO.....PLAINTIFF

VERSUS

**RAEL OTUNDO.....
DEFENDANT**

RULING

The plaintiff filed this suit against the defendant at the High court Nairobi Central Registry by way of a plaint dated 27th August 2004 seeking orders for vacant possession of the suit premises known as **NYARIBARI CHACHE/B/B/BOBURIA/3997** plus costs of the suit and interest. The defendant upon being served with summons filed a defence to the claim on 1st October 2004.

In paragraph 10 of the defence the defendant avers that the plaint herein offends the mandatory provisions of Order VII of the Civil Procedure Rules and gave Notice of Preliminary Objection.

On 13th December 2005 he filed this application by way of Chamber Summons expressed to be brought under Order VII Rule 9(1) of the Civil procedure Rules and Section 3 and 3A of the Civil Procedure Act seeking orders that the plaint filed herein be returned to the plaintiff of his counsel for presentation to the High Court sitting in Kisii. He also sought costs of this application.

The application is based on the ground:

- (1) That the alleged cause of action arose within the territorial jurisdiction of Kisii High Court where even the subject Sale Agreement was made and signed.
- (2) That the defendant works for gain and resides within Kisii Municipality which is within the jurisdiction of Kisii High Court.
- (3) That the filing of this suit in Nairobi is meant to punish the defendant who has so far incurred huge expenses in transport.
- (4) That suit is filed to the convenience of the plaintiff and his counsel.
- (5) That all the witnesses came from Kisii Town or its environs which is the local jurisdiction of Kisii High Court and;

(6) That the plaintiff's intentional act of filing this suit in this court in Nairobi amounts to flagrant abuse of the process of the court.

The application is also supported by affidavit sworn by the defendant in which she has avers to similar facts as those stated on the grounds in support of the application.

The application is opposed by the plaintiff on the ground that:

- (1) That the application is unwarranted and an abuse of the due process of this court.
- (2) That the said Application is unsustainable in law and cannot be entertained by this Honourable Court.
- (3) That the said Application is not supported by any or any reasonable grounds to warrant grant of the orders sought and
- (4) That the said Application is a blatant attempt on the
- (5) part of the Defendant to delay the fair hearing and determination of this suit and to expose the plaintiff to undue hardship. Mr. Kerosi, counsel for the applicant submitted that the filing of this suit in Nairobi violated the provisions of Order VII Rule 9(1) of the Civil Procedure Rules.

Since the suit land the subject matter of this suit is in Nyaribari Chache within the local jurisdiction of Kisii High Court and prayed that the suit be withdrawn and the plaint be handed over to the plaintiff to file the same in Kisii High Court. The cause of action arose in Kisii Municipality which is within the local jurisdiction of Kisii High Court and all the witnesses come from Kisii Municipality where Mr. Kagongora counsel for the plaintiff submitted that the High Court has jurisdiction all over the country and therefore this suit is properly filed in Nairobi and therefore applicant's application is not sustainable. On the issue of expenses to transport witness t Nairobi he submitted that his client was ready to foot the expenses.

Order VII Rule (1) provides as follows:

“The plaint may at any stage of the suit be returned to be represented to the court in which the suit should have been presented”

From the wording of the said order it is clear that although the High Court has jurisdiction to entertain suits all over the country, having established High Courts regionally, a suit should be filed within the jurisdiction of the local High Court where the cause of action occurred unless otherwise ordered.

The defendant's application is therefore allowed and I order that the plaintiff's plaint be withdrawn and be transferred to Kisii High Court. For clarity of the word transfer used in a restricted sense to enable the plaintiff to file the suit at Kisii High Court without paying the required requisite filing fees having paid the same at Nairobi.

The applicant is entitled to the costs of this application.

It is so ordered.

Dated at Nairobi this 19th day of June, 2006.

J.L.A. OSIEMO

JUDGE