



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KERICHO

Misc Appli 62 of 2006

FRANCIS MURAGE J. KIRAGU 1ST PLAINTIFF

ZACHARIA OGOTI ASIAGO 2ND PLAINTIFF

VERSUS.

KIPKEMOI ARAP NGENO 1ST DEFENDANT

BENJAMIN K. CHEBET 2ND DEFENDANT

THE HON. ATTORNEY GENERAL 3RD DEFENDANT

RULING

The defendants in **High Court Civil case 103 of 2006 Nakuru**; are **Kipkemoi Arap Ngeno**, 1ST defendant, **Benjamin K. Chebet**, 2ND defendant and **Attorney General**, 3RD defendant respectively. They have filed this notice of motion which is principally brought under the provisions of **Section 18** of the **Civil Procedure Act**. They have sought for orders that the **HCCC NO. 103 of 2006 Nakuru** to be transferred to Kericho High Court for hearing and determination.

The application is grounded on the fact that both the first and second defendants reside at Kericho Township and the suit premises, the subject matter of this dispute is situated within Kericho Township. It will be convenient for the defendants who are Civil Servants of the Government of Kenya

who are stationed within Kericho to attend the court proceedings in Kericho.

Lastly, the costs involvement of traveling to Nakuru and other inconveniences could be avoided if this matter is heard in Kericho where there is a High Court. This application is supported by the affidavit of the 1st defendant sworn on 26th July 2006. The matters deposed thereto in the said supporting affidavit elaborates in greater detail why the suit should be transferred. The application was opposed by the plaintiffs who filed a notice of preliminary objection and a replying affidavit sworn on 3rd August 2006 by Zacharia Ogot Asiago, the 2nd plaintiff.

The respondents argued that this matter was presented by a stranger to the proceedings in Nakuru HCCC 103 of 2006.

Secondly, it is argued that the 1st applicant is the Deputy Registrar based at Kericho Court and it will not be fair to transfer the matter which should be under his direct supervision. The other issues raised, is

that the plaintiffs have raised a complaint against the 1st applicant regarding abuse of office and it will not be in the interest of justice to transfer the matter to Kericho High Court.

I have considered this case against the provisions of the law especially the provisions of **Section 12** of the **Civil Procedure Act** which gives guidance on where a suit should be instituted.

“A suit for recovery of immovable properties shall be instituted in the court within the local limits of whose jurisdiction the property is situated.”

In this particular matter, the suit premises being **Kericho Municipality/Block 4/314** is within Kericho Municipality. There is a High Court in Kericho where the suit ought to have been filed.

Secondly, the 1st and 2nd defendants reside and work in Kericho. Thus under **Section 12** of the **Civil Procedure Act**, the suit should be instituted within the local limits of where the defendant voluntarily resides or personally works for gain. I have taken into account the objection raised by the plaintiffs which are mainly to do with the facts that the 1st defendant works as a Magistrate at the Kericho Court.

I wish to point out that although the 1st defendant works at Kericho, he is not the judge who will handle the matter. There are also other deputy registrars who can handle any matter which requires to be handled by a deputy registrar other than the 1st defendant. The fears indicated in the respondents' replying affidavit are merely speculative and there is no basis for them to fear that the 1st defendant who is merely doing his work will interfere with this suit. If the respondent had written a complaint against the 1st and 2nd defendants over the suit premises that has nothing to do with the fair trial of a matter.

In the circumstances, I find no merit in the matters raised by the respondents, and I find it will be convenient and in the interest of fair administrative practice to order that **HCCC 103 of 2006** be transferred to Kericho High Court for trial and determination.

In the first place, that is where the suit should have been filed and parties should not be allowed to forum seek according to their own whims.

Cost of this application will be in the cause.

Ruling read and delivered on 17th day of October 2006.

MARTHA KOOME

JUDGE