



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 1823 OF 2000**

**PAUL OJIGO OMANGA.....PLAINTIFF**

**VERSUS**

**JAPHETH ANGITA.....DEFENDANT**

**RULING**

This is the defendants application for an order that the suit be withdrawn from High Court Registrar Nairobi and be transferred to High court Registry Kisii for trial by the Judge at Kisii.

The dispute arises from a Tenancy Agreement commencing on 1.6.99 executed by parties in Nairobi by which defendants leases his building plot No. 177 L.R No 1430 Homa Bay Town to plaintiff for a term of 5 years which expires on 1.6.2004.

Although any party can file a suit arising from any part of Republic of Kenya in the Central Registry in Nairobi, suits should be ideally be filed in the nearest High Court Registry to the parties.

The general principle is that a suit should be filed within the local limits of whose jurisdiction the defendant rises or the cause of action arises or the property in dispute is situated.

The justification for the principle is that the parties should have their dispute determined quickly, more convenient and more cheaply. In this case although plaintiff lives in Nairobi the defendants resides in Rongo.

The leased premises are situated in Homa Bay. The cause of action arose in Home Bay. The defendant objected in his defence to all filing of the suit in Nairobi and intimated that he would file an application for transfer of the suit to High Court Kisii.

There is a dispute as to whether or not plaintiff has done improvements on the demised premises worth shs 360,000 and the trial court may at the hearing decide to inspect the premises.

There is no good reason why plaintiff filed this suit in Nairobi. By Order XLVI Rule 5(2) Civil Procedure Rules the Court can even on its own motion direct that the suit be heard by resident Judge in Kisii.

Although order XLVI Rule 5 has not been referred to in the application it has been relied on in the cause of hearing and his court has jurisdiction under order XLVI Rule 5(2) to make the order sought. The respondent has not been prejudiced by failure to refer XLVI in the Application and the order sought cannot be refused solely on the ground that order XLVI 5(2) was not cited or that no order or wrong order has been cited.

I am satisfied that in all the circumstances of this case it is in the wider interest of justice that this suit should be tried in the nearest High Court Registry which High Court at Kisii.

Consequently I allow the application with costs to the extent that under order XLVI Rule 5(2) Civil Procedure Rules 1 order that this suit be tried by the Resident Judge High Court of Kenya at Kisii.

**E.M. Githinji**

**JUDGE**

**6.3.2003**

**Mr. Ogutu for Applicant present**

**Mr. Lumwanji holding brief for Wanyama for Respondent**