REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

LAND & ENVIRONMENT COURT NO.28 OF 2014

LYDIA ACHIENG ABURA.....APPLICANT

VERSUS

USONIK FARM PURCHASE CO-OPERATIVE

SOCIETY LIMITED.....RESPONDENT

R U L I N G

1. This ruling follows the hearing of the preliminary objection whose notice was filed here on 4/3/2014. The notice is dated 28/2/2014 and is premised on Section 19 of Environment and Land Court Act Act, 2011, which enjoin that this court is bound by the procedure laid down by the Civil Procedure Act (Cap 21). It is also based on Section 12 of Civil Procedure Act which provides for the appropriate courts to hear certain suits concerning immovable property. It is the defendant who raised the objection.

2. The Kernel of the objection is that the suit property herein – Land Reference 6015/3 is situated in Nandi District and following provisions of Section 12 of Civil procedure Act, it is the court at Eldoret, not Kisumu, which should hear this suit.

3. In simple terms, this Court is faulted for lacking territorial jurisdiction to hear this suit.

4. The plaintiff opposed the objection and raised some counter-arguments. The suit property, the plaintiff asserted, is a 1000-acre piece of land that straddles two administrative areas – Kisumu and Nandi. The location of the property was said to be nearer Kisumu than Eldoret. And the jurisdiction of this court, the plaintiff went on, is national, not local, and section 12 of Civil Procedure Act, which focuses on local limits of subordinate Courts, does not therefore apply.
5. To buttress the argument on application of Section 12 and other jurisdictional concerns the plaintiff availed the decided case of **DANIEL KIMANI MOSEKA VS JAPHETH ARTHUR MWANGI KIURIRE: HCC NO.228/2011, MACHAKOS.** In the case an objection akin to the one raised herein was advanced by the defendant. The defendant wanted the case transferred to Nairobi from Machakos on the ground that the suit property was situated in Nairobi. The court dismissed the application on the basis that its jurisdiction was national, not local, and that Section 12 of Civil Procedure Act (Cap 21) applied only to subordinate Courts.

6. I am persuaded by the Court's reasoning in the availed case. I am also persuaded by the arguments availed by the plaintiff. This Court is a superior court of record. It is clearly at par with the High Court. Its jurisdiction is national, not local. Section 12 of the Civil Procedure Act clearly applies to subordinate court, whose jurisdiction is clearly not national and has local limits. The defendant's counsel is wrong to think that Section 12 of Civil Procedure applies to this Court. It applies to

subordinate Courts and this is not one such **COURT.** It is a superior Court of record.

7. The plaintiff raised the argument that the suit property straddles two administrative areas. Another argument was that the property is nearer Kisumu than Eldoret. The defendant had ample time to respond to these two crucial points. The response offered however is completely mute on these points. They are points therefore that stand unchallenged. And we cannot wish them away.

8. I expected the defendant also to tell the court of any inconvenience or disadvantage it would experience if the matter is heard here. None was forthcoming. I thought too that I would be told of any ulterior motive that plaintiff may have had in filing the case here or any undeserved advantage that would accrue to the plaintiff if the case is heard at Kisumu instead of Eldoret. There was nothing.

9. When all is considered, it is clear that the defendant's appreciation of the law is wrong. The law and other circumstances highlighted during hearing clearly favour the rejection of the objection. Without equivocating therefore, I hold the objection unmeritorious and dismiss it with costs.

A.K. KANIARU – JUDGE

8/5/2014

8/5/2014

Before A.K Kaniaru – Judge

Okumu M. - C/C

No party – Present

Interpretation: English/Kiswahili

Indumuli for Magot for applicant/defendant

Rachier Omolo (absent) for plaintiff/Respondent

COURT: Ruling on Preliminary objection filed here on 4/3/2014 and dated 28/2/2014 read and delivered in open **COURT.**

Right of Appeal – 14 days.

A.K. KANIARU – JUDGE

8/5/2014