



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 497 OF 2017**

**FORMERLY KISII ELC NO. 190 OF 2016**

**JAMES OLOOLKEYAI OLE SERIANI.....PLAINTIFF**

**-VERSUS-**

**OLE NKOLIAI .....1<sup>ST</sup> DEFENDANT**

**STEPHEN NKOLIAI.....2<sup>ND</sup> DEFENDANT**

**DAVID NKOLIAI.....3<sup>RD</sup> DEFENDANT**

**NDEGE KIPOS.....4<sup>TH</sup> DEFENDANT**

**DAVID MPILEL.....5<sup>TH</sup> DEFENDANT**

**RULING**

The Defendants had by an Application dated 8<sup>th</sup> November, 2018 but filed in court on 4<sup>th</sup> February, 2019 and brought under Section 1A,1B and 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules sought the suit herein be transferred to the Kilgoris Principal Magistrate’s Court for hearing and determination. The Application was based on the grounds that the suit relates to Land Parcel TRANS MARA/OLOMISMIS/972 which is located within the jurisdiction of the aforesaid court and further that the parties are residents of Kilgoris and transferring the suit will be convenient to them in terms of costs. The Application was further supported by the affidavit of R.V. Mukoya advocate.

When the Application came up before me for hearing Mr. Mukoya Advocate submitted that he will rely on the contents of the Application and will not make any submissions. Mr. Ochwangi counsel for the Respondent equally stated that he will make oral submission on points of law.

I have considered the Application before me and the submissions made by counsel. It is not in dispute that the suit land falls within the jurisdiction of Kilgoris Principal Magistrate’s Court neither have the Respondents demonstrated to me the lack of such other jurisdiction whether pecuniary or otherwise by Kilgoris Principal Magistrate’s Court to hear and determine the suit herein and in the circumstance I find that the Application is merited and I order that the suit herein be transferred to Kilgoris Principal Magistrate’s Court for hearing and determination.

I further order each party shall bear its costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this 27<sup>th</sup> day of **FEBRUARY, 2019**

**Mohammed Noor Kullow**

**Judge**

**27/2/19**

In the presence of:

CA: Kimiriny

Mr Langat holding brief for Ogutu for the Plaintiff/Respondent

Mr Mukoya for the Defendant/Applicant

**Mohammed Noor Kullow**

**Judge**

**27/2/19**