



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ENVIRONMENT AND LAND COURT
CIVIL SUIT NO. 176 OF 2016

**USHWIN KHANNA (Suing in his capacity as the Administrator
of the Estate of Androniki Philotas Ghikas).....PLAINTIFF**

-VERSUS-

- 1. CONCORD INSURANCE COMPANY LTD (Under statutory management)**
- 2. MOMBASA COUNTY LAND REGISTRAR ,**
- 3. THE ATTORNEY GENERAL.....DEFENDANTS**

RULING

1. This is a preliminary objection raised by Mr. Ngare for the 2nd and 3rd Defendants. That this court lacks territorial jurisdiction to hear and determine this suit. That under section 12(b) of the Civil Procedure Act suits ought to be filed or instituted within the local limits of whose jurisdiction the property is situated. That paragraphs 5 of the amended plaint states that the property is situated in Kilifi County which falls within the jurisdiction of ELC, Malindi. He prays that the suit be dismissed.

2. The preliminary objection is opposed by Mr. Ismael for the Plaintiff on the grounds that this court has jurisdiction to hear and determine land matters within Kenya.

That the property is registered within Mombasa land registry which is within the local limits of this court. Further that the 2nd and 3rd Defendants have not made any application to transfer the suit to Malindi and that upholding the preliminary objection will amount to contravening the Plaintiff's rights under Article 48 of the Constitution.

3. I have considered the preliminary objection, the relevant provisions of the law and the oral submissions of both counsels.

4. It is not in doubt that paragraph 5 of the amended plaint dated 31st August 2016, that the land is situated in Kilifi County. This would ordinarily fall within the jurisdiction of ELC Malindi.

It is also not in doubt that this court has jurisdiction to hear and determine land matters within the Republic of Kenya.

I note that the title is registered in Mombasa Land Registry. This means the land Registrar Mombasa would be the one to act on the final orders from this court.

5. I note that the 1st Defendant did not enter appearance and/or defence within the stipulated period. The Plaintiff has obtained interlocutory judgment against the 1st Defendant.

6. I have considered all circumstances prevailing and find that it is in the interest of justice that this matter is heard and determined by this court. By this court I am referring to ELC Mombasa.

7. Article 159(2) of the Constitution states, "in exercising judicial authority the court and tribunals shall be guided by the following principles

a)

b)

c)

d) Justice shall be administered without undue regard to procedural technicalities.”

I am alive to the above principles. The 2nd and 3rd Defendants have not demonstrated what prejudice they will suffer if this matter proceeds in this court.

Dismissing this suit on account of procedural technicality would be too drastic. I therefore find the preliminary objection herein lacks merit and the same is dismissed. Costs shall be in the cause.

It is so ordered.

Dated, signed and delivered at Mombasa on the 17th day of October 2017.

L. KOMINGOI

JUDGE

17/10/2017