



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**  
**ELC PETITION CASE NO 9 OF 2018**

**1. CHUNKY LIMITED**

**2. CURLY WURLY LIMITED.....PETITIONERS**

**VERSUS**

**1. PATRICE NDUNE**

**2. MOHAMED ABDIKHAIYA**

**3. SAHAL AHMED DAHIL**

**4. KAHIA TRANSPORTED LIMITED**

**5. MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT**

**6. DIRECTOR OF SURVEY MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT**

**7. CHIEF LAND REGISTRAR**

**8. COUNTY LAND REGISTRAR MOMBASA**

**9. NATIONAL LAND COMMISSION**

**10. THE ATTORNEY GENERAL**

**11. EDWARD KIGURU.....RESPONDENTS**

**RULING**

The application is dated 12<sup>th</sup> October 2021 and brought under Section 12 and 15 of the Civil Procedure Act, Section 19(2) of the Environment and Land Act Court seeking the following orders;

1. That this motion be and is hereby certified urgent.
2. That this Petition be transferred to ELC Kwale for further directions.
3. That all matters related to this Petition being: ELCC NO. 273 OF 2017, ELCC NO. 405 OF 2017, ELCC NO. 92 OF 2020, ELCC NO. 202 OF 2018 be transferred to ELC Kwale for further directions.
4. That this Honourable Court be pleased to issue such further orders in the interest of justice.
5. That the costs of this application be in the cause.

It is based on the grounds that this honourable court lacks the territorial jurisdiction to deal with this Petition. That the subject pieces of land are located within Kwale County as is evidenced by the various rate payments and survey documents. That admittedly the Petitioners initially

filed this Petition in 28<sup>th</sup> July, 2017 in this honourable court as at the time no functional Environment and Land court in Kwale County had been set up. That Kwale County now has a functional Environmental and Land Court in which this Petition should be heard. Contemporaneously, there is an application filed by the 1<sup>st</sup> and 2<sup>nd</sup> Petitioner to consolidate all the aforementioned related matters which application is unopposed and is slated for mention on 19<sup>th</sup> October, 2021. However, it is trite law that jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation on proceedings pending other evidence. That Section 12 of the Civil Procedure Act makes it mandatory for a suit to be filed in the court where the subject matter is situated specifically providing that " Subject to the pecuniary or other limitations prescribed by law, suits where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate." That Section 19(2) of the Environment and Land Act provides that "the court shall be bound by the procedure laid down by the Civil Procedure Act." Additionally, it goes without saying competence of a court to adjudicate over a dispute goes to the very root of the power conferred by the constitution and other enabling statutes. That this honourable court has the inherent jurisdiction to relocate a case from one Environment and Land Court to another.

The Kwale County Surveyor submitted that the subject properties being MN/VI/909 & 910 are located near the Southern Bypass highway. They are on the left of the highway as one heads towards Nairobi.(Annexed is a satellite imaging map marked TM1, Location plans marked TM1B and TM1C showing the property boundaries in black and the Southern Bypass highway in blue). That also attached and marked TM3 & TM4 is an extract from the area survey maps from the Director of Survey Kenya obtained by HIS office. That from this extract he has extrapolated the position of the suit parcels MN/VI/909 & 910 marked in black from the Southern Bypass highway in blue. That on the left of the Southern Bypass Highway as one heads towards Nairobi is Kwale County while on the right hand side is Mombasa County. This clearly confirms that the suit parcels MN/V/909 & 910 are located within Kwale County. (Annexed is a Topographical map of Kwale/Mombasa 201/1 marked TM5 and TM6). That the above survey maps and satellite imaging depicts conditions as they currently exist on the ground as at the date of this affidavit.

The respondents opposed the application stating that the Petition No 9 of 2018 was initially filed in the Human Rights & Constitutional Division of the High Court, as constitutional Petition No 34 of 2017. The Petition which was transferred to this Court, and given a new number as Petition No 9 of 2018. Invariably therefore, the pleadings in both that Petition and civil suit No 273 of 2017 are intertwined in their very nature. It is from such pleadings that the decision of whether or not to transfer these matters to ELC in Kwale will be considered. The respective combatants are not in agreement on whether the respective properties are situate in the County of Mombasa or that of Kwale. In the circumstances, to make a determination for transfer of these suits to the ELC in Kwale will be to make a determination on cardinal issues in the pleadings, before the Court has the benefit of relevant evidence from witnesses, such as Surveyors, and the relevant Registrars from the registries whereat the properties are registered. Therefore, no determination on the issue of location of the properties can be reached without the benefit of a full hearing and a consideration of evidence from both sides.

This court has considered the application and submissions therein. It is based on the grounds that this honourable court lacks the territorial jurisdiction to deal with this Petition. That the subject pieces of land are located within Kwale County as is evidenced by the various rate payments and survey documents. That admittedly the Petitioners initially filed this Petition in 28<sup>th</sup> July, 2017 in this honourable court as at the time no functional Environment and Land court in Kwale County had been set up. The Kwale County Surveyor submitted that the subject properties being MN/VI/909 & 910 are located near the Southern Bypass Highway. He produced survey maps and satellite imaging and confirmed that the parcels are situated in Kwale County. The respondents object and state that the respective combatants are not in agreement on whether the respective properties are situate in the County of Mombasa or that of Kwale. I find that there is prima facie evidence that the subject matter is situated in Kwale County which now has an ELC Court. I find that any contentious issues can be determined in that court as ELC Courts have concurrent jurisdiction and I see no prejudice to be suffered by the respondents. I find that this application has merit and I grant it as prayed.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 19<sup>TH</sup> DAY OF JANUARY, 2022**

**N.A. MATHEKA**

**JUDGE**