



**COPY**

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL CASE NO. 232 OF 2011**

**1. JOSEPHINE NYEVU MWADZIWE**

**2. RAYMOND CONZI MWADZIWE..... PLAINTIFFS**

**- VERSUS-**

**1. FRANCIS MUJUMBA ALUHA**

**2. WYCLIFFE JIRONGO MUHANGANI ..... DEFENDANTS**

**RULING**

The Applicant in this case moves the Court to have Nairobi HCC. 806 of 1997(OS) Francis Mujumba Aluha and Wycliffe Jirongo Muhangani Vs Joseph Mwadziwe Mwinga and all proceedings herein to be moved to Mombasa and be heard together with HCCC. NO. 232 OF 2011 for trial and disposal.

The basis of his application is that one Josephine Nyevu Mwadziwe is old and ailing and that her condition does not allow her to travel often and that Mombasa is the ideal place for hearing. he argues that no prejudice will be occasioned to the defendants.

The defendant/respondents opposes this application on the ground that the suit HCC. 806 of 1997 (OS) regarding the property Nairobi Block No. 96/19 (House 18 Nairobi) was filed earlier at Nairobi. That the parties to the two cases Nairobi. HCCC. 806 of 1997 (OS) and Mombasa HCCC. 232 of 2011 are basically the same save for a few substitutions in respect of deceased parties. That the suit property in both suits is situated in Kariobangi Estate in Nairobi. The respondent relied on Section 12 and 15 of the Civil Procedure Act, in regard to suits for recovery of immovable property.

There is no dispute here that the suit property in both cases {Nairobi Block 96/19 House 18 Nairobi} is situate at Nairobi. That the parties are basically the same in the two cases. Further there is no dispute either that this is a suit for immovable property and that the Court within the local limits of which the property is situate is Nairobi.

That HCCC. NO. 806 of 1997 (OS) is the earlier case and has indeed proceeded to directions stage. Section 12 and 15(a) of the Civil Procedure Act are instructive in this matter as to the place of filing and in what Court the suit in respect of the suit premises should be filed.

Hearing the case in respect of the same subject matter and in respect of the same parties in Nairobi and

Mombasa in courts of concurrent jurisdiction might cause an embarrassment to the court. This is not desirable. The Civil Procedure Act is very clear as to the place of institution the suit and the Court where the matter shall be heard.

I order that the proceedings in Mombasa HCCC. 232 OF 2011 shall be stayed pending the hearing and the determination of Nairobi HCC. 806 of 1997 (OS). The parties if they so wish might want to file a consent to have Mombasa HCCC. 232 of 2011 to be consolidated with Nairobi HCCC. 506 of 1997 (OS) for the two cases to be heard together under HCCC. NO. 806 of 1997 (OS) in which case the Mombasa Case shall be transferred to Nairobi for hearing and determination. The end result is that the application is dismissed with no order as to costs.

**Dated and delivered in open Court at Mombasa this 14th day of February, 2014.**

**S.N. MUKUNYA**

**JUDGE**

**14.2.2014**

Read in the presence of:

Odiaga for the defendants/respondents