



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MALINDI**

**Civil Appeal 49 of 2010**

**IN THE MATTER OF: LAND PARCEL NO. 2058 (ORIGINAL 284/147/111/MN LAND  
PARCEL 2060 (ORIGINAL 284/149)/111/MN**

**A N D**

**IN THE MATTER FOR: DECLARATION THAT THE PLAINTIFFS/APPLICANTS HAVE  
OBTAINED OWNERSHIP OF FOUR DECIMAL TWO SEVEN FIVE (4.275) HACTARES OF  
THE ABOVE SAID LAND BY WAY OF ADVERSE POSSESSION**

**B E T W E E N**

**1. THOMAS MKANGI**

**2.OMAR KENGA BENDERA**

**3.MARGARET MUMBE MUTHUSI**

**4.KIRIMA KABU NGALA & 79 OTHERS .....PLAINTIFFS**

**VERSUS**

**1. AISHA ALI MOHAMED**

**2.OMAR MAHAMUD MOHAMED .....DEFENDANTS**

**R U L I N G**

1. Before me for determination is the 2<sup>nd</sup> defendant's application, supported by the 1<sup>st</sup> defendant seeking to have the instant suit transferred to the High Court of Kenya registry in Mombasa for hearing of interlocutory applications and the main trial.
2. The same is based on several grounds, and expanded in the affidavit of the applicant. The main ones being grounds a-e:

***(a)The suit property is registered at the Mombasa Land Titles Registry situate at the Coast area headquarters which is only approximately 100 meters from the Mombasa Law Courts.***

***(b)The suit land is subject of other litigations at the Mombasa Law Courts some of which are earlier to the present matter amongst them Misc. Appl. No. 104 of 1999 (OS) between Gideon Nassim Kitti & Aisha Ali Mohamed & others. HCCC NO. 140 of 2011 between Cannon Automobile Limited vs Faiza Oscar Meuli & Anor, HC MSC App. No. 3 of 2012 between Omar Mohamoud Mohamed Farah –vs- The Registrar of Titles –and- Gideon Nassim Kitti & 3 others and Constitutional Petition No. 46 of 2012 between Gideon Nassim Kiti & Anor –Vs) Faiza Oscar Meuli & Others – and- Omar Mohamud Farah & Another.***

***(c) There is a judgment in Misc. App. No. 104 of 1999 in respect of which a Notice of Appeal was lodged.***

***(d)That a Notice of Appeal has also been filed in respect of the Court Orders given on 29<sup>th</sup> March, 2012 by the Hon. Justice Kassango.***

***(e)That the suit land is situated at Kikambala area which is only approximately 20km from the Mombasa High Court registry convenient to witnesses and economical for site visit by the court.***

3. The plaintiffs filed three grounds of opposition:

***a. That the subject matter of the suit is situate at Kikambala within Kilifi District or County and as per the Civil Procedure Rules (amended) of 2010, the current suit should be tried at Malindi High Court.***

***b. That the matters or suits cited in the 2<sup>nd</sup> defendnt’s application have not been shown to relate to the plaintiff, neither is the claim by the plaintiffs similar to the claims by the other litigants.***

***c. That the alleged cases or suits pending in Mombasa as mentioned in the 2<sup>nd</sup> defendant’s application are so many that should there be a transfer of this present suit to Mombasa High Court for consolidation and Trial, then the very reason and/or purpose for the sought for transfer will not be realized.***

During the hearing the parties reiterated their positions as articulated in their filed documents.

4. Having now carefully considered the material placed before me I take the following view. It is not disputed that the suit property lies within Kilifi district which falls under the jurisdiction of this court. However, it is equally not disputed that several suits relating to the suit property have been filed and are in various stages of completion in the High Court in Mombasa. The plaintiffs have sought to down play the significance of the suit property upon which the applicants stake their claim by stating that their interest is only in one plot. Their contention is that there is no sufficient connection between this suit and others. The argument has also been raised that the present suit relates to adverse possession and not comparable with the pre-existing suits.

5. For his part the applicant is concerned that hearing the cases separately may result in conflicting decisions emanating from counts of concurrent jurisdiction. Considering all the rival arguments, I am of the view that it is more prudent that this suit be heard in Mombasa for two main reasons:

1. To protect and preserve the integrity of jurisprudence among judges of concurrent jurisdiction in respect of the same subject matter.

2. To further the overriding objective of facilitating the “just, expeditious, proportionate and affordable resolution of civil disputes” as stipulated in Section 1(A) of the Civil Procedure Act.

I therefore grant prayer 2 of the Notice of Motion dated 17<sup>th</sup> May, 2012. This matter is to be mentioned in Mombasa before a judge in the appropriate registry on 27<sup>th</sup> August, 2012.

Delivered and signed at Malindi this 25<sup>th</sup> day of **July, 2012** in the absence of the parties. Court clerk - Evans

**C. W. Meoli**

**JUDGE**