



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**Civil Suit 82 of 2008**

**GREMMO DANIELLE**

**HTP HOLDING DE PARTICIPATION TOURISTIQUES S.A.....PLAINTIFFS**

**VERSUS**

**KILILY SPA .....DEFENDANT**

**R U L I N G**

When this suit came up for hearing on 29<sup>th</sup> September 2008, the defendant raised a preliminary objection stating that this court has no jurisdiction to hear and determine this matter because the cause of action arose in Malindi which is within the jurisdiction of the Malindi High Court. This court was urged to transfer the suit to Malindi High Court.

The plaintiff opposed the Preliminary Objection and urged this court to dismiss the same. It is the argument of Mr. Asige that the cause of action arose in Nairobi and in Mombasa. It is also pointed out that the defendant has denied jurisdiction of the Malindi High Court in its defence. Mr. Mabeya, learned advocate who held brief for Mr. Olekina, learned advocate for the defendant, admitted that the defence in paragraph 9 denies jurisdiction of Malindi High Court. It is said that is a typographical error.

I have considered the oral arguments tendered by learned advocates from both sides. Basically the defendant's objection is premised on the ground that this court lacks the territorial jurisdiction to hear and determine this case because the cause of action arose in Malindi and that both parties reside in Malindi. In paragraph 12 of the plaint, the plaintiff states that the cause of action arose where the defendant does business in Malindi. In paragraph 9 of the defence, the defendant states that the Malindi High Court has no jurisdiction. Mr. Asige orally stated before this court that the cause of action arose in Nairobi and Mombasa. Mr. Mabeya on the other hand said that there was a typographical error in paragraph 9 of the defence. From the oral arguments tendered by learned advocates, it is clear that at some point, the pleadings have to be amended to enable this court determine where the case can be heard. Of course, this court under Section 60 of the constitution has an unlimited original jurisdiction in civil and criminal cases. The Preliminary Objection is based on the rules of Civil Procedure which ensures that disputes are heard in the nearest court as possible. In this case it would appear from the pleadings that the nearest court is Malindi High Court. But the learned advocates have hotly contested that in a preliminary objection. I am unable to determine the issue at this stage unless the pleadings are amended first. The learned advocates appear to agree in certain aspects. They seem to agree that it is necessary to amend the pleadings before the Preliminary issue can be effectually determined. In view of the aforesaid, I overrule the preliminary objection and direct the parties to file a formal application to determine the issue of jurisdiction and amendment before taking any other step.

**Dated and delivered at Mombasa this 6<sup>th</sup> day of October 2008.**

**J. K. SERGON**

**J U D G E**