

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Misc Civil Appli 203 of 2007

1. **KIBIRU EMPORIUM LTD**
2. **GLADWELL WANGECHI KIBIRU**
3. **MELVIN JOHN BLACKBURN.....APPLICANTS**

VERSUS

LADY KATHLEEN BLACKBURN.....RESPONDENTS

RULING

By a motion dated 4th June 2007, Lady Kathleen Blackburn (applicant) sought to have this suit transferred to Malindi High Court for hearing and disposal. She swore an affidavit in support of the motion. The motion is strenuously opposed by Kibiru Emporium Ltd., Gladwell Wangechi Kibiru and Lord Melvin John Blackburn (Respondent).

It is the argument of Mr. Mrima learned advocate for the applicant that the cause of action arose at Kilifi within the territorial jurisdiction of the Malindi High Court. It is the learned advocate's argument that though the arbitration proceedings were conducted in Mombasa, the matter should be referred to Malindi. Mr. Murima further relied on the Chief Justice's recent gazette notice and that 4(2) of the Arbitration rules.

Mr. Buti learned advocate for the Respondent is of the view that this matter should be heard in Mombasa because the proceedings being challenged arose in Mombasa within the jurisdiction of this court.

I have considered the rival submissions made by learned advocates on both sides. I have also perused the application plus the affidavit in support and the grounds against. The substantive matter in this dispute is the notice of motion dated 15th May 2007 in which the Respondents herein are seeking to have the Arbitral award made in Arbitration Cause No. 4 of 2006 made at Mombasa on 30th March 2007 set aside. It would appear the primary cause of action arose in Kilifi and later gave rise to Arbitration proceedings which were heard and determined in Mombasa. There is also an uncontested averment that there are proceedings filed before the Malindi High Court vide H.C. Misc. Civil Application No. 19 of 2007 in which the applicant herein seeks for the enforcement of the Arbitral award. It is not denied that the Malindi matter was filed earlier than this. I have no doubt in my mind that both the Malindi and the Mombasa High Courts have jurisdiction to hear the matter. However, I will direct this matter to be withdrawn from this court and transferred to Malindi for two main reasons

One, the Respondents herein upon being served within the Malindi H.C. Misc. App. No. 19 of 2007 should have deemed it fit to file theirs in Malindi to avoid courts making conflicting decisions. On a light note I am in a way curing some mischief which should not have been visited upon the parties by their legal advisors.

Secondly, it will be convenient, expedient, time and cost saving to have the two divergent applications heard by one court.

Consequently I allow the motion as prayed save that costs shall abide the outcome of the two motions.

Dated and delivered at Mombasa this 19th day of June 2007.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Lewa h/b Mrima for Applicant. Buti for the Respondent.