



**Ndurya & 2 others v Municipal Council of Malindi & another; Omondi & 12 others (Affected Party) (Environment & Land Miscellaneous Case 220 of 1999) [2022] KEELC 14941 (KLR) (22 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14941 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND MISCELLANEOUS CASE 220 OF 1999  
NA MATHEKA, J  
NOVEMBER 22, 2022**

**BETWEEN**

**ELINOR KADZO NDURYA ..... 1<sup>ST</sup> PLAINTIFF  
THOMAS KARISA NDURYA ..... 2<sup>ND</sup> PLAINTIFF  
BEATRICE CHAUREMBO NDURYA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**MUNICIPAL COUNCIL OF MALINDI ..... 1<sup>ST</sup> DEFENDANT  
THE CHAIRMAN GEDE PRIMARY SCHOOL ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**LUKA OMONDI & 12 OTHERS ..... AFFECTED PARTY**

**RULING**

1. The application is dated 14<sup>th</sup> February 2022 and is brought under Section 3 & 34, IA & 1B of the [Civil Procedure Act](#), Section 12 & 15 of the [Civil Procedure Act](#), Section 19(2) of the [Environment and Land Court Act](#) seeking the following orders;
  1. That this matter be certified as urgent and service be dispensed with in the first instance.
  2. That the honorable court be pleased to transfer this suit to the Environment and Land Court Malindi for further directions.
  3. That the honorable court be pleased to issue such further orders in the interest of justice.
  4. That the costs of this application be in the cause.



2. It is based on the grounds that the Plaintiffs/Respondents filed the suit herein against the Defendants/ Respondents in 1999. That the 2<sup>nd</sup> Defendant/Applicant herein is a public school under the ministry of education and the state department of early learning and basic education. That the suit property which forms the subject matter of the suit is located in Gede within Kilifi county. That the nearest Environment and Land Court to the suit property is in Malindi. That the school is located in Gede within Kilifi County and the Plaintiffs live within Gede area. That the Plaintiffs/Respondents will not suffer any prejudice if the prayers sought herein issue.
3. The Plaintiff/Respondent stated that the Land and Environment Court has territorial jurisdiction and not only in the County where the subject matter is situated. That though the suit property is in Kilifi County this matter has been pending in court since 1999 and this application has been filed late. That the affected parties are senior officials in matters related to land and work in Kilifi County and they have an interest in the matter. That from the conduct of the Defendants since inception of this matter they are estopped from now seeking a transfer of this matter.
4. This court has considered the application, submissions and authorities cited therein. The provisions of Article 162 (2) (b), as read with Articles 165 (5) (b) of the *Constitution*, 2010, and Section 13 of *Environment and Land Court Act* No. 19 of 2011 confers this court with unlimited original and appellate jurisdiction in disputes relating to “the environment and the use and occupation of, and title to land.”. Section 12 to 15 of the *Civil Procedure Act*, Chapter 21 of Laws of Kenya, gives the person suing the option of approaching the nearest Court with Jurisdiction to the place the cause of action occurred, immovable property is situated, or where the person sued actually and voluntarily resides or carries on business, or personally works for gain.
5. Section 12 of the *Civil Procedure Act* stipulates that:-

Subject to the pecuniary or other limitations prescribed by any law, suits –

- (a) For the recovery of immovable property, with or without rent or profits;
- (b) For the partition of movable property;
- (c) For the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- (d) For the determination of any other right or interest in immovable property;
- (e) For Compensation for wrong to immovable property;
- (f) For the recovery of movable property actually under distraint or attachment;

where the property is situate in Kenya; shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business, or personally works for gain.”



6. The provisions of Section 15 of the *Civil Procedure Act* stipulates as follows:

Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction;

- (a) the defendant or each of the defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or ...
- (c) the cause of action, wholly or in part, arises.

7. In the instant case it is a finding of fact that the suit property which forms the subject matter of the suit is located in Gede within Kilifi County. That the nearest Environment and Land Court to the suit property is in Malindi. That the school is located in Gede within Kilifi County and the Plaintiffs live within Gede area. Indeed, the Plaintiffs has confirmed that the affected parties also work in Kilifi County. Therefore, I find that not only is the property located in Kilifi County but also that the parties are resident in that County. In this case, there is no reason to warrant having the case heard and determined at Mombasa. I order that this case be transferred to Malindi ELC, for hearing and determination. The costs of the application to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 22<sup>TH</sup> DAY OF NOVEMBER 2022.**

**N.A. MATHEKA**

**JUDGE**

