



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)**

**CIVIL SUIT NO. 75 OF 2006**

**SAMUEL KANOGO**

**RIITHO.....**  
**.....PLAINTIFF**

**VERSUS**

**1. AMINA YAA.....**  
**.....1<sup>ST</sup> DEFENDANT**

**2. MARCIO RIMINI.....**  
**.....2<sup>ND</sup> DEFENDANT**

**3. HAMISI ABDALLA HARE.....**  
**3<sup>RD</sup> DEFENDANT**

**RULING**

The dispute in this suit involves all that piece of land known as **LR NO. KILIFI/JIMBA/431** situate in Malindi District of the Coast Province.

In his plaint the plaintiff who is himself a lawyer acting in person alleges that the first, second and 3<sup>rd</sup> defendants have trespassed onto his said parcel of land without his consent. When this matter came up before the court for the hearing of the Chamber Summons dated 26<sup>th</sup> January 2006 Mr. Khaminwa counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants applied orally to have this suit transferred to Malindi High Court. He submitted that the defendants are residents of Malindi District and the 1<sup>st</sup> defendant is over 80 years old and it would be extremely expensive and inconvenient for her to travel all the way to Nairobi leave alone that there is a High Court in Malindi as well as Mombasa. It would be cheaper and suit would be heard expediently if the same was heard in Malindi High Court where the suit premises is situate and where the defendants reside.

Mr. Ritho in opposition to the application submitted that although originally when this suit was filed it had only 3 defendants who were erecting buildings on the suit premises, he intends to enjoin 10 Government Officials who are said had dealings with the suit land. He has already filed an amended plaint though not served on the defendant's counsel. In all there will be 13 defendants. The provisions of the Civil Procedure provides the guidelines in respect of place of suing.

Section 12:

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

- (a) for the recovery of immovable property;
- (b) for the partition of immovable 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 to or interest in immovable property;
- (e) for compensation for the 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.

Mr. Riitho in reply to Khaminwa's submissions submitted that the High Court has no power to transfer a suit filed in the High Court. The High Court can only transfer suit between the subordinate courts. He referred the court to Section 17 of the Civil Procedure Act which provides:

*"17" where a suit may be instituted in any one of two or more subordinate courts, and is instituted in one of those courts, any defendant after notice to the other parties, or the court of its own motion, may at the earliest possible opportunity, apply to the High Court to have the suit transferred to another court, and the High Court after considering the objections, if any shall determine in which of the several courts having jurisdiction shall proceed."*

This suit is over a dispute involving interest in immovable property. The Act provides where such a suit should be instituted, "in the court within the local limits of whose jurisdiction the property is situate. The immovable property in this suit is situate in Malindi District. There is a High Court in Malindi and if one moves on, there is another one in Mombasa. But the plaintiff moved all the way to Nairobi. The establishment of courts essentially are meant to move justice nearer to the people. The defendants have complained about this suit being instituted all the way in Nairobi and especially the 1<sup>st</sup> defendant who is over 80 years old.

For one to move from Malindi to file a suit in Nairobi amounts to abuse of the process of the court and the court cannot just watch its process being abused. It has jurisdiction to stop the abuse.

For the above reason I allow the defendants application and order that the plaintiff's suit herein be and is transferred to Mombasa High Court for hearing and final disposal.

The plaintiff will bear costs of this application. It is so ordered.

Dated and delivered at Nairobi this 23<sup>rd</sup> day of February 2006.

**J.L.A. OSIEMO**

**JUDGE**

**Mr. Ritho: Application for leave to appeal.**

**Mr. Ritho:**

**Pray for stay of this ruling pending appeal which will be instituted immediately. I also pray that status quo be maintained awaiting the outcome of the appeal**

**J.L.A. OSIEMO**

**JUDGE**

**Court: Order as prayed.**

**J.L.A. OSIEMO**

**JUDGE**