



Mohammed & 2 others v Chiwe & 4 others (Environment & Land Case E002 of 2021) [2022] KEELC 14725 (KLR) (14 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14725 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE E002 OF 2021
PM NJOROGE, J
NOVEMBER 14, 2022**

BETWEEN

**HADIJA MOHAMMED 1ST PLAINTIFF
HALIMA DAFALA GOLE 2ND PLAINTIFF
ABDI DAMBALA 3RD PLAINTIFF**

AND

**ADI JOHN CHIWE 1ST DEFENDANT
DAMBALA GUYO SOKE 2ND DEFENDANT
FATUMA HUSSEIN DAMBALA 3RD DEFENDANT
HAGE HUGO 4TH DEFENDANT
MOHAMMED HUSSIEN DAMBALA 5TH DEFENDANT**

RULING

1. The notice of preliminary objection in this matter states as follows;
 1. That the application is nonstarter, vexatious and an abuse of court process and hence should be dismissed with costs in limine.
 2. That this honourable court do determine whether it has territorial and/or geographical jurisdiction to hear and determine this application and suit as the subject land is in Moyale town within Marsabit county in the Republic of Kenya.
 3. That in the alternative to (1) above this court do transfer the same from Isiolo environment and land court to moyale law courts in Moyale for hearing and determination.



4. That in the alternative to (1) and (3) above this court do transfer the same from Isiolo Environment and Land Court to Marsabit law courts in moyale for hearing and determination.
2. The notice of preliminary objection (PO) was canvassed by way of written submissions which submissions I have carefully considered.
3. The notice of preliminary objection seeks dismissal of an application. With due respect, there is no application to be dismissed. Perhaps the defendants' application meant that they wanted this suit dismissed.
4. Ground 1 of the preliminary objection is nebulous and does not raise a pure point of law.
5. What is called ground 2 does not amount to a ground on a pure point of law. It asks the court to determine if or if not this court has territorial and/or geographical jurisdiction. Of itself, this so called ground, clearly raises an argument which needs to be canvassed by the parties. However, this court finds that it is not necessary for this court to find if or if not it has territorial and/or geographical jurisdiction. This court is not a subordinate court.

This is a court that has jurisdiction in environment and land matters in all areas of Kenya. This is an issue that has been determined by the constitution. Article 162 (2) (b) of the constitution and section 13 of the Environment and Land Court Act are eminently clear. Any contrary argument is therefore summarily debunked and dismissed.
6. The so called grounds 4 and 5 merely want the court to transfer this suit to Moyale Law Courts. No ground to support a pure point of law can be discerned by this court.
7. In the circumstances, the purported preliminary objection is hereby dismissed for not having brought out any pure points of law.
8. Costs concerning this application are awarded to the plaintiffs and shall be in the cause.

DELIVERED IN OPEN COURT AT ISIOLO THIS 14TH DAY OF NOVEMBER, 2022 IN THE PRESENCE OF;

Court Assistant: Balazi

Wageni for the plaintiffs

Miss Nyasani h/b Yusuf for the defendants

HON. JUSTICE P.M NJOROGE

JUDGE

