



**Ali v Dika & 2 others (Environment & Land Case 002 of 2022)
[2022] KEELC 2201 (KLR) (6 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2201 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE 002 OF 2022
PM NJOROGE, J
JUNE 6, 2022**

BETWEEN

FATUMA MOHAMMED ALI PLAINTIFF

AND

BORU DIKA 1ST DEFENDANT

HENRY KIMATHI 2ND DEFENDANT

ADAM GITONGA NYAGAH 3RD DEFENDANT

RULING

1. The application is dated 14/3/2022 and seeks orders that;
 1. That the application herein be certified urgent and be heard ex-parte in the first instance;
 2. That this honourable court be pleased to arrest and /or stay the proceeding in this matter pending the hearing and determination of this application;
 3. That this honourable court be pleased to review and/or vary and set aside its orders issued on 3rd March,2022 transferring the case to Isiolo and order that the same be heard in Meru and/or be placed before Hon.Justice Mbugua for hearing and determination;
2. The application has the following grounds;
 1. That this Honourable court made orders on 3rd March, 2022 directing that the suit herein be transferred to Isiolo to be heard before Justice Njoroje
 2. That the said Justice Njoroje did not hear the suit on its merits as he only heard the proceedings with regard to the application for injunction dated 15th January 2013;



3. That the suit was heard by Justice Mbugua who took the evidence of all the witnesses who have testified in this suit;
 4. That the Plaintiff/Applicant is quite apprehensive of her security due to the perennial conflicts between the plaintiff's tribe and that of the Defendant and which is bound to be heightened due to the political atmosphere prevailing in the country;
 5. That land being an emotive issue which evokes open hostilities, it will be inimical to justice and fairness to have the Plaintiff litigate in Isiolo;
 6. That the Defendants have on previous occasions shown their dispensation to disobeying the court orders and acting in such a way as to border on threatening the plaintiff and hence the plaintiff is not comfortable to have the matter transferred to Isiolo;
 7. That litigation is expensive and a further delay of this matter will subject the Applicant to the inconveniences of incurring costs in prosecuting this suit;
 8. That there is only one witness remaining to testify and all the proceedings with regard to this case have been typed;
 9. That the suit was instituted way back in 2013 and has been heard substantially as there is only one witness remaining to testify and all parties can close their cases;
 10. That transferring the suit will further delay the conclusion of this case noting that the Applicant approached this Honourable court in 2013 seeking justice;
 11. That justice delayed is justice denied and transferring this case to Isiolo will further delay the conclusion of this matter which is against the guiding principles of this court under Article 159 of *the Constitution* which requires that justices shall not be delayed;
 12. That this Honourable court is under a statutory obligation to give effect to the overriding objective under section 1A of the *Civil Procedure Act* by ensuring the efficient disposal and timely disposal of proceedings at a cost affordable by the parties and particularly the Applicant;
 13. That it is the interest of justice that the orders transferring suit be reviewed and set aside to facilitate the expeditious disposal of this case;
 14. That unless this application is allowed, the Applicant shall suffer irreparable loss and damage.
 15. That this application has been brought without undue delay and ought to be granted in the interests of equity and justice.
3. The application is supported by the affidavit of Fatuma Muhammed Ali, the applicant sworn on 14/3/2022.
 4. I issue the following orders;
 - a. Applicant to file and serve written submissions within 14 days of today and the respondent to do so within 14 days after receipt of the applicant's written submissions.
 - b. Parties to come to court for directions on 27/6/2022.

**WRITTEN AND DELIVERED IN OPEN COURT AT ISIOLO THIS 6TH DAY OF JUNE, 2022
IN THE PRESENCE OF:**

Court assistant: Balazi



Miss Nyasani for the Applicant

Tyson Mwendwa for the Respondents

HON. JUSTICE P.M. NJOROGE

JUDGE

