



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISCELLANEOUS APPLICATION NO 93 OF 2016

**IN THE MATTER OF CIVIL SUIT NO. 26 OF 2015 SENIOR RESIDENT MAGISTRATE'S
COURT AT MOYALE**

AMINA OMAR MUNYE.....1ST APPLICANT

MOHAMED NURU MUNYE.....2ND APPLICANT

VERSUS

ALI EYMOY ABDI.....RESPONDENT

RULING

1. This application is stated to be filed under Section 18 (1) (b) (i) and 3(A) of the Civil Procedure Act and all other enabling provisions of the law.

2. It seeks orders:-

1. THAT this application be certified as urgent and service on the Respondent be dispensed with in the first instance.

2. THAT this Honourable Court be pleased to transfer the suit Number S.R.M.C.C. No. 20 of 2015. ALI EYMOY ABDI versus AMINA OMAR MUNYE & MOHAMED NOOR MUNYE and any and all proceedings therein from the Senior Resident Magistrate's Courts at Moyale for trial and determination in this Honourable Court.

3. THAT pending hearing and determination of prayer 2 above, all proceedings in Moyale S.R.M.C.C NO. 26 of 2015 be stayed.

4. THAT the costs of this application be in cause.

3. The Application is supported by the Affidavit of MOHAMED NOOR MUNYE and has the following grounds:-

1. THAT there is now pending before Senior Resident Magistrates Court, Moyale Civil Suit No. 26 of 2015, ALI EYMOY ABDI versus AMINA OMAR MUNYE & MOHAMED NOOR MUNYE.

2. That the said relates to purported plot number 5093 (Formerly plot No. 726A), Land dispute and the same may only be properly adjudicated upon by the Environment and Land Court.

3. THAT the High Court at Malindi vide Petition No. 3 of 2016 in its ruling on 11th November, 2016 ruled that the Magistrates Courts do not have jurisdiction to determine Land matters and that the same can only be adequately determined in the Environment and Land Court.

4. THAT the main issue in the suit relates to ownership of purported plot No. 5093 (Formerly plot No. 726A).

5. THAT the Respondent is currently developing the suit property therefore interfering with the suit property.

6. THAT interest of justice will be served by granting the prayers sought.

4. The Judgment in Malindi Petition No 3 of 2016 has been appealed against . For this reason , the Honourable the Chief Justice has vide his communication dated 28th November, 2016 directed that all land cases already filed in the Magistrates' Courts do remain in those Courts until the apposite appeal is heard and determined.

5. In the Circumstances, I decline to grant the prayers sought in the application.

6. I award no costs.

7. The REGISTRY is directed not to entertain any applications concerning transfers of suit to and from the Magistrates' Courts.

8. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 6TH DAY OF DECEMBER, 2016 IN THE PRESENCE OF:-

C:A Daniel/James

P.M. NJOROGE

JUDGE