



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**  
**CIVIL SUIT NO.270 OF 2016**

**VICTORIA MERE DZILLA.....PLAINTIFF**

**DOUGLAS MWANGI MUTERU.....DEFENDANT**

**RULING**

This is the preliminary objection dated 17/10/2016 raised by the defendant that this court lacks the territorial jurisdiction to hear and determine this suit.

The defendant's counsel told the court that the suit land is situated north of Mtwapa Creek which is in Kilifi District. That this matter should be heard by the Environment and Land Court in Malindi.

He further told the court that the plaintiff and the defendant are neighbours in Mtwapa and therefore hearing this matter in Mombasa impedes access to justice.

Mr. Ambwere for the plaintiff opposes the preliminary objection. He told the court that he land is registered in Mombasa Land Registry.

That both the plaintiff and the defendant reside in Mombasa. He prays that the preliminary objection be dismissed.

I have considered the submissions of both counsels. I have looked at the pleadings.

It is not in doubt that the suit land is situated within Mtwapa Creek which is approximately 25 kilometers from Mombasa court and 100 kilometers from Malindi court.

This suit was filed in September 2016. It has not taken off. It is almost eight months now.

Article 159 (2) of the Constitution provides for access to justice and speedy disposal of disputes.

The defendant has not stated what prejudice he will encounter if the matter is heard in Mombasa.

I find that the defendant will not be prejudiced in any way.

I find that the preliminary objection herein to be without merit and the same is dismissed.

I do order each party to bear his or her own costs.

Orders accordingly.

**L. KOMINGOI**

**JUDGE**

**Ruling dated and delivered in open court on the 26<sup>th</sup> day of April 2017 in the presence of Ambwere for the plaintiff, Mr. Mwaniki for the defendant and the court assistant Koitamet**

**L. KOMINGOI**

**JUDGE**