



Varsani & another v Kokoi & 8 others; Dzombo (Interested Party) (Environment & Land Case 189 of 2015) [2024] KEELC 890 (KLR) (21 February 2024) (Ruling)

Neutral citation: [2024] KEELC 890 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 189 OF 2015
EK MAKORI, J
FEBRUARY 21, 2024**

BETWEEN

HARJI SHANJI VARSANI 1ST PLAINTIFF

SAID MBARAK AWADH 2ND PLAINTIFF

AND

HAMISI MRINZI KOKOI 1ST DEFENDANT

JAMAL ABEID KHAMIS 2ND DEFENDANT

ABDULHAKIM ABEID KHAMIS 3RD DEFENDANT

MOHAMED ABEID KHAMIS 4TH DEFENDANT

NATIONAL LAND COMMISSION 5TH DEFENDANT

CHIEF LAND REGISTRAR 6TH DEFENDANT

DIRECTOR OF LAND ADJUDICATION 7TH DEFENDANT

DISTRICT LANDS ADJUDICATION KILIFI 8TH DEFENDANT

DISTRICT LANDS REGISTRAR KILIFI 9TH DEFENDANT

AND

DZUHA CHARO DZOMBO INTERESTED PARTY

RULING

1. The application dated 9th March 2020 seeks to have this matter moved to the ELC Court Mombasa for final disposal because the subject property is situated at Mariakani (albeit within the jurisdiction of this court which has supervisory power over the Kilifi Courts and environs).



2. It is stated that the Mombasa Court is nearer and that the applicant has a long-standing illness and from the medical report he is advised not to travel for long distances hence the plea for relocation of the hearing venue.
3. All the respondents did not oppose the application for change of venue save for the 1st respondent who opposed stating that the applicant is seeking his convenience oblivious of the pleas from the other parties. It is not true that all advocates come from Mombasa. Further, the applicant should have sacrificed one more time to attend the hearing to avoid disrupting the progression of the trial.
4. The issue that falls for the decision of this Court is whether to have this matter sent to the Mombasa ELC for final hearing and disposal.
5. I have reviewed the materials placed before me I have also considered the submissions by the parties. The decision to have a matter filed in its registry to be heard in another Court is allowed under the following conditions as held in *Hangzhou Agrochemical Industries Ltd v Panda Flowers Limited* (Civil Suit 97 of 2009) [2012] KEHC 1937 (KLR) (Civ) (8 October 2012) (Ruling):

“That then brings me to the issue of the circumstances under which the court may direct that a matter filed in a particular High Court registry be heard in a different place. In my view, which view I gather from authorities and from the law, the court should consider such factors as the motive and the character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice, the expense which the parties in the case are likely to incur in transporting and maintaining the witnesses, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship. If the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused. Being a discretionary power, the decision whether or not to exercise it depends largely on the facts and circumstances of a particular case. If for example, the plaintiff, knowing that the defendant will not afford the cost of travelling all the way to defend a suit, decides to institute the same at a place farthest from where the defendant is with a view to either inflicting suffering on the defendant or forcing the defendant to settle, the court would be forced to intervene. In my view, since it is the plaintiff who has accused the defendant, the defendant should not be placed at the position of a disadvantage based on mere allegations. To the contrary, the plaintiff should institute the proceedings where the defendant is all factors being equal. It is my view that whereas the provisions of Sections 12, 13, 14 and 15 are not be applicable to the High Court those provisions, though not binding, offer useful guidelines on whether or not the court should exercise its discretion one way or the other.”

6. This matter appears to be rather aged. It started in the Mombasa Law Courts. It has been in our system pending for some time. The matter may be tried both by this Court and the ELC Mombasa. The parties reside in Mariakani, which is closer to the Mombasa ELC. Mombasa is where the majority of counsels originate. Except for the 1st respondent's attorney, who is from Malindi, all parties were in favor of the trial's new location.
7. Having considered the applicant's illness and the doctor's recommendation that he avoid travelling great distances, I believe that the Mombasa ELC will be more practical and easily accessible for the vast majority of the parties who reside there. The 1st respondent's advocate will experience some inconvenience, but as previously said, the majority of the parties are from Mariakani. The suit property is at Mariakani, which is significantly closer than the Malindi ELC. I believe sending the file to the



Mombasa ELC for final disposal will be cost-effective. I have deliberately given this some thought, not wanting to come out as encouraging forum shopping or dereliction of duty.

8. The application dated 9th March 2020 is hereby allowed with costs in the cause.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 21ST DAY OF FEBRUARY 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Kithome for the 1st Plaintiff

Mr. Opulu for the 2nd Plaintiff

Ms. Omondi H/B for Mr. Khatib for 2nd, 3rd and 4th Defendants

Ms. Lutta 6th to 9th Defendants

Court Assistant: Happy

In the Absence of:

Mr. Ragira for 1st Defendant

Mr. Lughanje for 2nd Defendant

Mr. Kiilu for 5th Defendant

