



IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC. NO. 78 OF 2013

LAMU BREEZE INVESTMENT LIMITED

EQUATORIAL COMMERCIAL BANK LIMITED PLAINTIFFS

- V E R S U S -

1. CHARLES MALAKWEN

2. LUCAS CHIMERA KENGA

3. DIM PROPERTIES LIMITED

4. THE SENIOR REGISTRAR OF TITLES

5. COUNTY GOVERNMENT OF KILIFI

6. THE HON. ATTORNEY GENERAL DEFENDANTS

RULING

[1] The Preliminary point taken here by Mr Ngare State Counsel is that this suit is filed in the wrong court. He avers that this suit should have been filed at Malindi Environment and Land Court pursuant to Sec. 12 (d) of the Civil Procedure Act. He argues that, that section is couched in mandatory terms. He relied on the *Mukisa Bisquite* case in prosecuting his Preliminary Objection. He stated that LR. Number 10159 is in Kilifi Town in Kilifi County and the High Court which is nearest is Malindi. He urged the court to dismiss the suit and or transfer it to Malindi. He was supported in his arguments by the 1st, 2nd , 3rd and 5th defendant.

[2] Mrs Umaara learned counsel for the plaintiff argued that the defendants 1st and 2nd are adults who reside in Mombasa and that the 3rd defendant is a company whose registered office is in Mombasa. That the land Registry is in Mombasa. That filing the suit in Mombasa was convenient as all parties live in Mombasa and all witnesses will be in Mombasa. That Section 12 (d) should be read as a whole.

[3] I have carefully listened to the parties and have fully considered their submissions and arguments. I feel that striking the suit for filing the same in the wrong court is a harsh and draconian measure. This will not finally resolve the issues between the parties, it merely prolongs the dispute since the plaintiff is not prevented from filing a fresh suit subject to limitation of time.

I therefore order that this suit be transferred to the Malindi Environment and Land Court Registry. The same shall be placed before my brother Judge there for further directions, orders and final determination. The costs of this transfer and other incidentals shall be in the suit.

It is so ordered.

**Dated and delivered in open court at Mombasa this 18th day of
September, 2014.**

S. MUKUNYA

JUDGE

18.9.2014

In the presence of:

Mr. Wangalwa advocate for A.B.Patel & Co. advocates

Ms. Lutta for 4th and 5th defendants