



REPUBLIC OF KENYA



KENYA LAW
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**Mohamed & 2 others v Chiwe & 4 others (Environment & Land Case
002 of 2021) [2024] KEELC 4202 (KLR) (13 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4202 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE 002 OF 2021**

PM NJOROGE, J

MAY 13, 2024

BETWEEN

**HADIJA MOHAMED 1ST PLAINTIFF
HALIMA DAFALA GOLE 2ND PLAINTIFF
ABDI DAMBALA 3RD PLAINTIFF**

AND

**ADI JOHN CHIWE 1ST DEFENDANT
DAMBALA GUYO SOKE 2ND DEFENDANT
FATUMA HUSSEIN DAMBALA 3RD DEFENDANT
HAGE HUGO 4TH DEFENDANT
MOHAMMED HUSSEIN DAMBALA 5TH DEFENDANT**

RULING

1. This application is dated 16th December, 2022 and is filed by the defendants. It seeks orders; -
 - a. That this Honourable Court be pleased to order the transfer of this ELC CASE NO. E002 of 2021 to Moyale Law Courts for hearing and disposal (sic).
 - b. That in the alternative to Marsabit Law Court for hearing and disposal.
 - c. Costs of this application be in the cause.
2. The application is supported by the affidavit of DAMBALA GUYO SORE, the 2nd defendant and has the following grounds;
 - a. The plaintiffs herein filed suit in this Honourable court.



- b. The defendants actually and voluntarily reside in Moyale Town.
 - c. The defendant's principal places of business are at Moyale.
 - d. The suit land parcel Number plot number 1012 MOYALE/BURJI is situated in Moyale Sub County, Marsabit County.
 - e. No prejudice will be suffered by the Plaintiffs if this application is allowed.
 - f. It is in the interest of both parties that this matter be transferred.
3. The application was canvassed by way of written submissions.
4. The main assertions made by the defendants are that:
- a. This suit will inconvenience them and ought to be heard at Marsabit or Moyale Law Courts which are nearer to where the parties reside. They say that moving the case to Marsabit or Moyale will facilitate the just, expeditious, proportionate and accessible resolution of this dispute in accordance with Section 3 of the *ELC Act* and Note 14 of the directions issued by the Chief Justice Vide Gazette Notice No. 5178 dated 25th, 2014. They also say that Order 47 Rule 6 of the *Civil Procedure Rules* requires that every suit be instituted in the Central office or registry of the High Court, in this case the ELC and be heard at the nearest High Court, in this case, the ELC.
 - b. That transferring the case to Marsabit or Moyale would accord to the overriding objective of Section 3A of the *Civil Procedure Act* which seeks to exercise expeditious and efficient disposal of suits.
 - c. The defendants say that the case of *Omar Dhadbo Versus Mohamed Masoud and Another* [2019] eKLR had similar facts and that in that case the court transferred the case from Mombasa ELC Court to Malindi ELC Court. They argue that similarly this suit should be transferred to Marsabit or Moyale Law Courts. I have also considered the other authorities cited by the defendants.
 - d. In response to the plaintiff's assertion that this application is Res Judicata this courts ruling concerning the defendant's application dated 13th December, 2021 which challenged this courts jurisdiction, the defendants say that they have established cogent reasons as to why this suit should be transferred to Marsabit or to Moyale. I find that my decision in this matter will not be affected by the allegations made by the parties regarding why and or why not the matter should be transferred to Marsabit or Moyale including allegations of threats and inclusion of matters which can only be considered during the substantial hearing of the suit.
5. The plaintiff's main assertions are that:
- a. This application is *Res Judicata* its ruling dated 13th December, 2021 which had challenged this courts jurisdiction to handle this matter.
 - b. This court has original and appellate jurisdiction to determine all environment and land disputes in accordance with Article 162 (2) (b) of the *constitution*.
 - c. In view of the courts original and appellate jurisdiction this court has territorial and peculiarly jurisdiction to handle this matter.
 - d. The question of costs to be incurred by the parties cannot be a determining factor concerning where suits should be heard.



6. I have considered the assertions and cross-assertions proffered by the parties to buttress their veritably diametric assertions. The application has made strong arguments in support of this application and especially the case of *Omar Dhadbo Versus Mobamed Masoud & Another* [2019] eKLR (Supra) would be a very strong authority if the circumstances were similar to those ones of this case. However, there is a big difference. This case dealt with the transfer of the case to a court of concurrent jurisdiction. In the facts and circumstances of this applications, there are no ELC Courts at Marsabit and Moyale. The nearest ELC Case to the place where the suit land is situated is Isiolo ELC Case.
7. Having considered all pertinent factors, I find that the defendants have failed to legally convince this court that this suit should be transferred to Marsabit or Moyale courts where there are no ELC courts.
8. This court issues the followings orders:
 - a. This application is dismissed.
 - b. Costs shall follow the event and costs for this application are awarded to the Plaintiff.

DELIVERED IN OPEN COURT AT ISIOLO THIS 13TH DAY OF MAY, 2024 IN THE PRESENCE OF:

Court assistant: Balozi/Rahma

Miss Nyasani holding brief for Plaintiff.

Miss Nyasani holding brief for Mathenge for the defendants.

HON. JUSTICE P.M NJOROGE

JUDGE

