



REPUBLIC OF KENYA



**Ndambuki & 4 others v Kanyi & another (Environment & Land Case  
29 of 2023) [2024] KEELC 4632 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4632 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 29 OF 2023**

**NA MATHEKA, J**

**JUNE 13, 2024**

**BETWEEN**

**DAVID NDAMBUKI ..... 1<sup>ST</sup> PLAINTIFF  
PATRICK MMBWANGA ..... 2<sup>ND</sup> PLAINTIFF  
GOHAR SHERO HUSSEIN BALUCHI ..... 3<sup>RD</sup> PLAINTIFF  
SHEILA ADA CHIBOLE ..... 4<sup>TH</sup> PLAINTIFF  
ELENA CHIBOLE ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**DAVID MUREITHI KANYI ..... 1<sup>ST</sup> DEFENDANT  
STANBIC BANK KENYA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application is dated 30<sup>th</sup> April 2023 and is brought under Sections IA, 1B, 3A, 63(c) & (e) of the [Civil Procedure Act](#) CAP 21 Laws of Kenya, Order 40 Rule 1& 4 Order 51 Rules 1, 3 & 12 of the [Civil Procedure Rules](#), 2010 and provisions of the [Arbitration Act](#) (No.4 of 1995 seeking the following orders;
  1. That this Honourable Court lacks jurisdiction to hear and determine the Plaintiffs' suit as the parties have their choice of forum as arbitration.
  2. That in the alternative, this Honourable Court lacks jurisdiction to hear and determine the Plaintiffs' suit as the alleged cause of action did not arise in the geographical jurisdiction of this court.
  3. That the costs of this Application be in the cause.



2. It is based on the grounds that Clause R of the Sale Agreement, forming the subject matter of the suit, provides for the resolution of disputes to be done through arbitration. That the suit properties, Sub Division Number 1528 Section IV/Mainland North and/or Sub Division Number 9613 Section III/Mainland North, are located in Mtwapa, Kilifi County which is outside the geographical jurisdiction of this court.
3. The jurisdiction of the ELC court flows from Article 162 (2)(b) of the [Constitution of Kenya](#) 2010. Section 13 (2) of the [ELC Act](#) vests this court with wide powers over any dispute relating to land it provides that;

In exercise of its jurisdiction under Article 162(2)(b) of the [Constitution](#), the Court shall have power to hear and determine disputes—

- a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - b. relating to compulsory acquisition of land;
  - c. relating to land administration and management;
  - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - e. any other dispute relating to environment and land
4. The jurisdiction of this court to hear and determine this suit flows from the Constitution and the law. The jurisdiction of court is not conferred upon it by parties nor can the court confer upon itself jurisdiction. The Supreme Court in [Samuel Kamau Macharia and Another vs Kenya Commercial Bank Limited & 2 others](#) (2012)eKLR held that;

“A court’s jurisdiction flows from either the constitution of legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”

5. I have perused the court record and find that this property is situate in Kilifi County. The contracts in issue relate to housing units constructed on sub division number 1528 Section IV/Mainland North. The Respondent opposes the application and states that the Plaintiffs reside in different parts of the country and the majority of them in Mombasa. That the suit can be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits whose jurisdiction the defendant actually and voluntarily resides or carries on business or personally works for gain. That the said agreements in this matter were also signed in Mombasa. Section 12 of the [Civil Procedure Act](#) Cap 21 provides for guidelines on choosing territorial jurisdiction. When filing a case it provides thus;

“Subject to the preliminary or other limitations prescribed by any law,

- a. for the recovery of immovable property; with or without rent or profits;



- b. for the partition of immovable property;
- c. for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- d. for the determination of any other right to or interest in immovable property;
- e. for compensation for wrong to immovable property;
- f. for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate: Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the Defendant may, where the relief sought be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides or carries on business, or personal works for gain."

Section 13 provides; -

"Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate, provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such court."

6. I have perused the pleadings before me and find that the Plaintiffs seek mandatory orders compelling the 1<sup>st</sup> defendant to issue the Plaintiffs with duly registered leases and a permanent injunction against the Defendants. Broadly speaking this is for the determination of their right to or interest in immovable property. In the instant case the suit property is in Kilifi County which is served by Malindi Environment and Land Court in Kilifi County. Given that the suit property is located within Kilifi County Government, subject to Section 12 as stated above, the correct forum is the Malindi Land and Environmental Court. Having found that this court has no territorial jurisdiction in the matter this court cannot determine the other issues in the preliminary objection touching on arbitration.
7. The 2<sup>nd</sup> Respondent submitted that the proper court would be the high court and this court cannot transfer the matter but should strike it out. I disagree and find that Section 13 (2) of the *ELC Act* gives the Environment and Land Court powers to hear and determine disputes

"relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and any other dispute relating to environment and land"

8. Consequently, I transfer this matter to the Environment and Land Court Malindi for hearing and determination. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 13<sup>TH</sup> DAY OF JUNE 2024.**

**N.A. MATHEKA**

**JUDGE**

