



**Mutua v Mutia & another (Environment and Land Appeal  
E024 of 2023) [2024] KEELC 4672 (KLR) (10 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4672 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND APPEAL E024 OF 2023**

**LL NAIKUNI, J**

**JUNE 10, 2024**

**BETWEEN**

**PENINAH KIMERU MUTUA ..... APPELLANT**

**AND**

**SIMON KATUA MUTIA ..... 1<sup>ST</sup> RESPONDENT**

**MAHER ABDULLA SHARIFF (BEING SUED AS THE LEGAL  
REPRESENTATIVE OF THE ESTATE OF ABDULLA SHARRIF OMAR  
MOHAMED) ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**I. Introduction**

1. The Honourable Court was compelled to deliver this short Ruling which was triggered by an express communication in form of a letter date 15<sup>th</sup> February, 2024 authored to the Deputy Registrar, the Environment and Land Court at Mombasa by the Advocates engaged by Abdulla Sharrif Omar Mohammed, the 2<sup>nd</sup> Respondent herein. The main pith and substance of the said letter was to have the impugned appeal lodged by the Appellant, Peninah Kimeru Mutua transferred to Voi, the Environment & Land Court.
2. Upon being mentioned before the Deputy Registrar, he felt and rightfully so that the best forum to deal with such issues was before a Judge. On 5<sup>th</sup> June, 2024 the matter was mentioned before this Court. Two Counsels, M/s. Wambura and M/s. Odhiambo for the Appellant and 2<sup>nd</sup> Respondent submitted briefly on the subject matter. Despite their diligence, the Honourable Court was dissatisfied. The Court felt it needful to gather more information. Resultantly, it directed the Counsels to submit further on 10<sup>th</sup> June, 2024.
3. Subsequently, on 10<sup>th</sup> June, 2024, while Mr. Kinyajui Advocate appeared for the Appellant, Mr. Mutinda Advocate was on record for the 2<sup>nd</sup> Respondent. Both of these Counsels effectively and



elaborately presented their cases to the full satisfaction the Court. Indeed, for clarity sake, the Honourable Court shall now proceed to re – produce the said respective submissions verbatim herein below.

## **II. The Appellant’s Case.**

4. While opposing the application to have the impugned filed appeal transferred from the Environment & Land Court at Mombasa to Voi, Environment and Land Court, Mr. Kinyanjui Advocate strongly submitted that there was a serious political interference over the subject matter. He averred that the 1<sup>st</sup> Respondent herein and the wife of the Governor for Taita had caused the suit property to be transferred to themselves. He informed Court that every time the upon feeling affected by the conduct of these people, the Appellant would endeavor to lodge complaint to the police based at Voi for their action but it was all in vain.
5. According to the Learned Counsel, all these efforts would be frustrated with threats of her being arrested by the same police officers. As a result, she became apprehensive and fearful that even if the matter was to proceed in Court, she would never be allowed to appear physically for fear of being apprehended and placed in custody under the influence of these persons. To the Learned Counsel, all these acts of omission and commission tantamount to violation of the fundamental rights and liberty of the Appellant. Accordingly, to ameliorate the situation, the Learned Counsel was of the strong viewpoint that the best alternative in the given circumstances was to have the impugned appeal heard and determined at the ELC, Mombasa and not Voi.

## **III. The responses by the 2nd Respondent’s case**

6. As a quick but brief rejoinder, Mr. Mutinda Advocate commenced by expressing his shock from the submission by the Appellant. He asserted that from the series of allegations by the Appellant termed as the existence of political interference was not backed up by any empirical documentary or oral evidence for that matter. To him, all these were evidence from the bar.
7. The Learned Counsel wondered loudly where these were just germinated all of sudden and this late in time. He informed Court that there were other related suits before other Court between the Appellant and the same parties yet none of these complaints had ever been raised. For instance, the Learned Counsel informed Court of the existence of Civil Suit – CMCC (Voi) Number E023 of 2020 where the Appellant was the 2<sup>nd</sup> Interested party while the Respondent in this appeal were parties. Hence, to him this was an afterthought.
8. Additionally, he asserted that now that there had been established an Environment & Land Court at Voi, pursuant to the provision of the Law, the best option was to have this suit transferred and be heard and determined at that Court.

## **IV. Analysis & Determination**

9. I have keenly considered and assessed the oral submissions by both the Learned Counsels for the Appellant and the 2<sup>nd</sup> Respondent herein based on the contents of the letter dated 15<sup>th</sup> February 2024 by the 2<sup>nd</sup> Respondent.
10. From the proceedings, there was only a singular issue for determination. That was whether the appeal already filed before this Court should be transferred to the Voi Environment and Land Court or not.
11. Before embarking on the indepth analysis of the said issue, it was imperative that the Honourable Court provides a brief facts of the case as sketchy as it may will appear. From the filed pleadings, through



a Plaintiff dated 18<sup>th</sup> July, 20218, the Respondents (as the Plaintiffs) instituted a civil suit before the subordinate Court against the Appellant (as the Defendant). The Plaintiff was later on amended on 4<sup>th</sup> May, 2022. It appears the main cause of action was to do with the sale of all that suit property known as Plot Numbers 1956/K/IX/396 between the Appellant and the Respondents herein terms and conditions stipulated thereof. Despite of this, for reasons not clear, it appears the transaction fell through and there were a myriad of accusations against each other. These ranged from there being a breach of contract between the parties; allegations of trespass to the property; the purchasers having taken occupation of the suit property and harassment of tenants through collection of rent; there being delay in processing of titling process and failure of the purchasers to complete payment of the outstanding purchase price among other issues. This necessitated on them instituting the suit.

12. Upon hearing the case to its logical conclusion, on 11<sup>th</sup> August, 2018, Hon. A.M Obura (Mrs) Chief Magistrate Court at Voi delivered the Judgement in favour of the Plaintiff. Being dissatisfied and aggrieved by the said decision, the Appellant lodged an appeal. She filed it at the Mombasa Environment and Land Court instead of Voi. It was from this appeal and the place of its filing that has germinated the altercation. That is adequate on the brief facts.
13. Now turning to the issue at hand. Undoubtedly, from March, 2024, there was now an established Environment and Land Court at Voi under the provision of Article 162 (2) of the Constitution of Kenya, 2010. Hence, the urge to have the appeal be transferred to Voi Environment and Land Court for hearing and final determination is quite valid and proper. It is based on that the Respondent moved this Court through a correspondence – a letter dated 15<sup>th</sup> February, 2024. At this juncture, I wish to strongly point out that, moving Courts through correspondence should be discouraged completely. It is not one of the best methods to move Courts as it denies the other party an opportunity to respond well nor Court to render proper decision. Ideally, the means to move Court are well spelt out under the provision of Order 51 of the Civil Procedure Rules, 2010 through formal applications or motions. Be that as it may, the letter stated to wit:-

“With the establishment of the ELC Court at Voi vide (Kenya) Gazette Notice No. 5057 dated 6<sup>th</sup> April, 2023, the above matter ought to be heard and determined by the ELC Court at Voi. To that end therefore, we humbly request that you liaise with the Court at Mombasa in having the matter transferred to Voi ELC for hearing and determination”.

14. As stated herein, both the Learned Counsels for the Appellant, Mr. Kinyanjui and Ms. Odhiambo Advocates vehemently opposed the transfer of the appeal from this Court to Voi courts on very peculiar reasons. Without much substantiation nor providing any empirical evidence to support their claim, they asserted that there were political interference perpetrated by some of the parties which had an effect on the matter and even fundamental liberty of the Appellant which she was entitled under the Constitution of Kenya, 2010. Indeed, the only practical example and an act of ostensible impunity depicted by these parties, the Learned Counsel informed Court that as at this date, the 1<sup>st</sup> Respondent and the wife of the Governor for Taita had already transferred the suit property to themselves. The impression the Court got was that from this alleged political undue influence in the Voi region by these parties would have some trepidations likely to influence and thus negatively affect the outcome and/or consequences of the appeal. Thus, it is for these reason that they urged Court to let the appeal be heard and determine at Mombasa as the safest forum to them and not Voi.
15. Essentially, I wish to affirm that the allegations by the Appellant are rather serous and grave. They cast aspersions on the independence of the Voi Environment and Land Court as provided in Article 160 (1) of the Constitution. Luckily, the issues raised by the Appellant have nothing to do and/or do not at all revolve around the conduct of the Judge of the Court, which is governed under the provision of



Article 168 (1), (2), (3), (4), (5), (6), (6), (7), (8), (9), and (10) of the Constitution of Kenya, 2010 and the Judicial Service (Code of Conduct and Ethics) Regulations, 2020, Section 13 of the Leadership and Integrity Act and the Bangalore Principles by any means. My simple understanding on the dispute, is that this a matter on wanting to attain fair hearing as founded under the provision of Article 25 (c) and 50 (1) and (2) of the Constitution of Kenya, 2010 caused by the ostensible political interference caused by the third parties within the Voi region.

16. Suffice to say, the Court wishes to spend a little bit on the concept of the independence of Judiciary. It is a sacrosanct principle which is enshrined in the constitution under Article 160 of the Constitution of Kenya, 2010. It is secured for the independence of the Judge in the determination of cases, from those entrusted with administrative responsibilities, as well as from the influence of outside forces whether political or religious. This independence was secured by the individual Judge's oath of office more specifically the part that reads

“.....to impartially do Justice in accordance with this Constitution as by law established, and the laws and customs of the Republic, without any fear, favour, bias, affection, ill-will, prejudice or any political, religious or other influence.....”

17. In saying so, I am guided by the case law of “Her Majesty The Queen v. Marc Beauregard [1986] 2 S.C.R. 56, in which the subject was thus elucidated:

“Historically, the generally accepted core of the principle of judicial independence has been the complete liberty of individual judges to hear and decide the cases that come before them: no outsider – be it government, pressure group, individual or even another judge – should interfere in fact, or attempt to interfere, with the way in which a judge conducts his or her case and makes his or her decision. This core continues to be central to the principle of judicial independence.”

18. Additionally, I wish to cite in the case of:- “Minister of Health and Others v Treatment Action Campaign and Others [2002] 5 LRC 216 at paragraph 99 where the Court explained its understanding of the role to protect the integrity of the Constitution thus:

“The primary duty of courts is to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice. The Constitution requires the State to respect, protect, promote, and fulfil the rights in the Bill of Rights. Where state policy is challenged as inconsistent with the Constitution, courts have to consider whether in formulating and implementing such policy the state has given effect to its constitutional obligations. If it should hold in any given case that the state has failed to do so, it is obliged by the Constitution to say so. In so far as that constitutes an intrusion into the domain of the executive that is an intrusion mandated by the Constitution itself.”

19. Similarly, in the case of:- “Nation Media Group Limited v Attorney General [2007] 1 EA 261” it was held that:-

“The Judges are the mediators between the high generalities of the Constitutional text and the messy details of their application to concrete problems. And Judges, in giving body and substance to fundamental rights, will naturally be guided by what are thought to be the requirements of a just society in their own time. In so doing, they are not performing a legislative function. They are not doing work of repair by bringing an obsolete text up to date. On the contrary they are applying the language of these provisions of the Constitution



according to their true meaning. The text is “living instrument” when the terms in which it is expressed, in their Constitutional context invite and require periodic re-examination of its application to contemporary life.”

20. With all due respect to the Learned Counsels for the Appellant, Mr. Kinyanjui and M/s. Odhiambo, I strongly hold that they were unable to convince the Honourable Court how the so called persons welding political influence within the Voi region would interfere with the independence of the able Learned Judge sitting in the Voi Environment and Land Court making him be unduly influenced and hence not deliver an impartial and independent decision over the subject matter in the appeal on merit. In any case, the adjudication of cases is hierarchical whereby should any party feel aggrieved by the decision of a Court, one is entitled to lodge an appeal seeking redressal in a superior court, in this case the Court of Appeal. I dare not say that parties herein are in pursuit of forum shopping as that would be unfair to them. Thus, I leave that issue completely.
21. Lastly, without wanting to re – invent the wheel, this Honourable Court has been informed and guided by the provisions of law on matters of the geographical jurisdiction of this court. Specifically, these have been provided for under the provision of Sections 12 and 15 of the Civil Procedure Act Cap. 21 which states as follows:

Suit to be instituted where subject matter is situate:- 12. Subject to the pecuniary or other limitations prescribed by any law, suits:-.

- (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 can 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 personally works for gain.

Section 15:- “Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction—

- (a) the Defendant or each of the Defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on business, or personally works for gain; or
- (b) any of the Defendants (where there are more than one) at the time of the commencement of the suit, actually and voluntarily resides or carries on



business, or personally works for gain, provided either the leave of the court is given, or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

22. I need say no more. Being an appeal, hardly are parties required to appear physically unless under very stringent circumstances. All the proceedings are conducted through affidavits and submissions and at most they are virtually done. It is for these reasons, I discern that let the Learned Judge sitting at the Voi Environment and Land Court accorded the opportunity to adjudicate on the appeal. I am highly certain that the Learned Judge will demonstrate that the fears on any bias, undue influence or favour perpetrated by so called political forces as depicted by the Appellant are utterly defeated and have no light of day in our courts.

#### **IV. Conclusion and Directions**

23. In conclusion, having carefully read and considered the letter dated 15<sup>th</sup> February 2024 and oral submissions by both the Learned Counsels for the Appellant and the 2<sup>nd</sup> Respondent, the Honourable Court directs as follows: -

- a. That an order made for the Deputy Registrar, Environment & Land Court to instantly transfer the file and thus this Appeal pursuant to the provision of Sections 12, 15 and 18 of the Civil Procedure Act, Cap. 21 to be heard and finally adjudicated at the Voi Environment and Land Court.
- b. That the appeal be mentioned before the Learned Judge at Voi and Environment and Land Court on 19<sup>th</sup> June, 2024 before Hon. Mr. Justice Edward Wabwoto for his directions thereof.

It Is So Ordered Accordingly.

**RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT MOMBASA THIS 10<sup>TH</sup> DAY OF JUNE 2024**

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**HON. MR. JUSTICE L.L. NAIKUNI**  
**ENVIRONMENT & LAND COURT AT**  
**MOMBASA.**

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant,
- b. M/s. Odhiambo Advocate for the Appellant.
- c. Mr. Mutinda Advocate for the Respondent.

