



**Muia & 2 others v Nzyoka & 3 others (Being Sued as President, Treasurer and Secretary, (Administrator) of Betania Onlus Association); Kajiado County Government (Interested Party) (Environment & Land Case 108 of 2018) [2025] KEELC 2890 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2890 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT & LAND CASE 108 OF 2018**

**EO OBAGA, J  
MARCH 27, 2025**

**BETWEEN**

**JULIUS MONZI MUIA ..... 1<sup>ST</sup> PLAINTIFF  
EUNICE NDINDA MUIA ..... 2<sup>ND</sup> PLAINTIFF  
JOHN KENNEDY MUTETI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**THOMAS MUTHIANI NZYOKA ..... 1<sup>ST</sup> DEFENDANT  
ANTONIETTA VITALE ..... 2<sup>ND</sup> DEFENDANT  
PAOLA GUARNATI ..... 3<sup>RD</sup> DEFENDANT  
ENRICO FATARELLI ..... 4<sup>TH</sup> DEFENDANT  
BEING SUED AS PRESIDENT, TREASURER AND SECRETARY,  
(ADMINISTRATOR) OF BETANIA ONLUS ASSOCIATION**

**AND**

**KAJIADO COUNTY GOVERNMENT ..... INTERESTED PARTY**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 5<sup>th</sup> February, 2025 in which the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants are seeking to have this case transferred to Kajiado Environment and Land Court. The Applicants contend that this court lacks the geographical jurisdiction to hear this case hence the call for transfer.



2. The Applicants assert that the suit properly is situated within Emali township which falls within Kajiado County and that the suit property was allocated by the County Council of Ole Kejuado, the predecessor of the County Government of Kajiado. The rates in respect of the suit property are collected by the County Government of Kajiado and that the Applicants reside within Kajiado County and that it will save the Applicants expenses of travelling to Makueni Environment and Land Court.
3. The Applicants' application was opposed by the Plaintiffs/Respondents based on a replying affidavit sworn on 14<sup>th</sup> February, 2025. The Respondents contend that the application is intent on delaying the finalization of this case. The transitional provisions under the *Environment and Land Court Act* provided that suits filed before the Act came into force were to proceed in courts where they had been filed.
4. The Respondents state that this case had been filed in Machakos High Court before it was transferred to this court and seeking to transfer a case where parties had confirmed compliance with Order (II) of the *Civil Procedure Rules* and had been fixed for hearing is to delay the finalization of the case which is over 20 years old.
5. The Respondents further state that Emali town is on the border of both Makueni and Kajiado Counties and that the Applicants will not suffer any prejudice as the distance between Emali and Kajiado and Emali and Makueni is almost the same.
6. The Third Party filed a replying affidavit sworn on 28<sup>th</sup> February, 2025 in which it supported the Applicants' application. The Third Party states that the Applicants are in possession of the suit property and that as the Respondents brought in the Third Party, that is an admission that the suit property is in Kajiado and therefore the case should be transferred to Kajiado.
7. The parties agreed to put in written submissions. The Applicants filed their submissions dated 6<sup>th</sup> March, 2025. The Respondents filed their submissions dated 17<sup>th</sup> March, 2025. The Third Party filed its submissions dated 10<sup>th</sup> March, 2025.
8. The Applicants submitted that this court is bereft of jurisdiction to hear this case. They cited the case of *Onwers of the Motor Vessel Lillian "S" -Vs- Caltex Oil Kenya Limited* (1989) KLR where it was stated as follows:
 

“Jurisdiction is everything. Without it, a court has no power to make one step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in resepect of the matter before it in the moment it holds the opinion that it is without jurisdiction” Emphasis ours
9. The Applicants also relied on the cases of *Kaduta Maimai Hamisi -vs- Peris Pesi Tobiko & 2 others* (2013) eKLR and *Samuel Kamau Macharia & another-vs- Kenya Commercial Bank Limited & others* (2012) eKLR.
10. The Applicants further relied on the provisions of Section 12 of the *Civil Procedure Act* which states as follows:
 

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.

11. Further realiance was placed on Section 15 of the [Civil Procedure Act](#) which provides as follows:

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.

Explanation.(1)—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. Explanation.(2)—A corporation shall be deemed to carry on business at its sole or principal office in Kenya, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Explanation. (3)—In suits arising out of contract, the cause of action arises within the meaning of this section at any of the following places, namely—

- i. the place where the contract was made;
- ii. the place where the contract was to be performed or the performance thereof completed;
- iii. the place where in performance of the contract any money to which the suit relates was expressly or impliedly payable. 12 [Rev. 2022] Civil Procedure CAP. 21

Illustration.—(a) A is a tradesman in Nairobi. B carries on business in Mombasa. B by his agent at Nairobi buys goods of A and requests A to deliver them to Mombasa by rail. A may sue B for the price of the goods either in Nairobi, where the cause of action has arisen, or in Mombasa, where B carries on business.



Illustration.—(b) A resides at Kisumu, B at Nairobi, and C at Mombasa. A, B, and C being together at Nakuru, B and C make a joint promissory note payable on demand and deliver it to A. A may sue B and C at Nakuru, where the cause of action arose. He may also sue them at Nairobi, where B resides, or at Mombasa, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the court.

12. The Applicants further submitted that the Environment and Land Court practice Directions issued by the Chief Justice vide Gazette Notice No. 5178 provide that suits relating to the Environment, the use and occupation of title to land should be filed in the nearest court within whose jurisdiction the suit property is situated.
13. The Respondents submitted that the suit premises is within Emali Township where the Applicants reside. The distance between Emali and Makueni is nearer than the distance between Emali and Kajiado and therefore it will be convenient for the case to be heard at Makueni.
14. The Respondents relied on the case of *Kitbita Ngeana -vs- Mwaniki Kisumu* (Civil Case No. 2 of 2016) where the High Court at Kitui held as follows:

“Circumstances that would move a court to grant the order sought were considered in the David Kabungu Case (Supra) where Okello J stated that:

“Section 18 (1)(b) of the Civil Procedure Act gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. The burden lies on the Applicant to make out strong case for transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is a relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead injustice. What the court has to consider is whether the Applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction... it is well established principle of law the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are, balance of convenience, questions of expenses, interest of justice and possibilities of undue hardship, and 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....want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court from which transfer is sought has no jurisdiction to try the case, transfer would be refused.”

15. The Third Party submitted that this court lacks the geographical jurisdiction to determine this case. Reliance was placed on *Owners of Motor Vessel Lillian “S” (Supra)* and the case of Independent Electoral Commission Constitutional Application No. 2 of 2011 where the court held that assumption of jurisdiction by courts in Kenya is a subject regulated by *the Constitution* by statute law and by the Principles laid out in Judicial Precedent.
16. I have carefully considered the Applicants’ application together with the support thereof by the Third Party, the opposition to the same by the Respondents, the submissions of the parties and the authorities cited. The only issue for determination is whether this court has jurisdiction to hear this case.



17. Though the Applicants and the Third Party have relied on the case of *Owners of Motor Vessel Lilian "S"* (Supra), this court does not lack jurisdiction in the sense of the aforesaid case. This court has jurisdiction as provided for under Section 13 of the *Environment and Land Court Act*. What the court will determine is whether it has geographical jurisdiction to hear the case.
18. It is important to note that neither *the Constitution* nor the *Environment and Land Court Act* confines the hearing of cases to the County where the subject matter is situate. The *Environment and Land Court Act* stipulates the jurisdiction of the court. The Act also states that the court is bound by the provisions of the *Civil Procedure Act*. The Act further mandates the Chief Justice to stipulate rules which will further the exercise of the jurisdiction for the court.
19. The Chief Justice in exercise of his powers under the *Environment and Land Court Act* published practice directions which were published under Gazette Notice No. 5178 of 25<sup>th</sup> July, 2024. Under Note 14, it clearly states that suits should be filed in the nearest court within whose jurisdiction the suit property is situate. Those directions took into consideration of the provisions of the *Civil Procedure Act* which stipulate that suits have to be instituted within the local limits where the property is situate and where the Defendants reside. See Section 12 and 15 of the *Civil Procedure Act* (Supra).
20. In the instant case, there is no doubt that the suit properties are situate within Emali Township and that the Applicants who are among the Defendants reside there. The distance between Emali and Kajiado is longer than the distance between Emali and Makueni. It will therefore be convenient for the Defendants to have their case heard in Makueni and not in Kajiado. If the Chief Justice's Practice Directions are anything to go by, then Makueni Environment and Land Court is the nearest court hence this court has the territorial jurisdiction to hear the same. I therefore find that the Notice of Motion dated 5<sup>th</sup> February, 2025 has no merits. The same is dismissed with costs to the Plaintiffs/ Respondents.

It is so ordered.

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**HON. E. O. OBAGA**

**JUDGE**

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 27<sup>TH</sup> DAY OF MARCH, 2025.**

In the presence of:

Ms. Moraa for Ms. Sankale for 3<sup>rd</sup> Party.

Mr. Muia for Plaintiffs

Mr. Njoroge for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

Mr. Mathuva for 1<sup>st</sup> Defendant.

Court assistant -Steve Musyoki

