



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CONSTITUTIONAL PETITION NO. 10 OF 2020

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF AN ALLEGED CONTRAVENTION OF ARTICLE 35 OF THE CONSTITUTION OF KENYA 2010 AND
THE CONTINUED CONTRAVENTION OF THE SAME**

BETWEEN

CAROLINE WANJIKU MACHUA.....PETIONER

THE DEPUTY COUNTY COMMISSIONER

KIAMBU SUB COUNTY.....1ST RESPONDENT

THE DISTRICT LAND REGISTRAR KIAMBU.....2ND RESPONDENT

KENYA REVENUE AUTHORITY.....3RD RESPONDENT

THE COMMISSION OF ADMINISTRATIVE JUSTICE4TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....5TH RESPONDENT

RULING

1. **CAROLINE WANJIKU MACHUA (Caroline)** filed this petition seeking the following prayers:-

a. That the Kiambu Deputy County Commissioner (the 1st respondent herein) forthwith provide the petitioner with:-

i. *A certified true copy of an extract of the proceedings of the board of its monthly meeting for the month of its monthly meeting for the month of October, 2018 in relation to land parcel No. NDUMBERI/NDUMBERI/3460.*

ii. *Certified true copies of the application tendered to the board alongside the booking for the same in relation to NDUMBERI/NDUMBERI/3460.*

b. *In the absence of the documents in prayer (a) hereinabove, the 1st respondent forthwith supply the petitioner with a written declaration to the effect that the documents do not exist.*

c. *That Kiambu District Land Registrar (the 2nd Respondent herein) supply the petitioner with a certified true copy of the documents that his office used to effect entry No. 5 in the records of title NO. NDUMBERI/NDUMBERI/3460 in favour of **KIRTISH CHANDULALA KARANIA** on 2nd MAY, 2019.*

d. *That the Kenya Revenue Authority (3rd respondent herein) do forthwith furnish the petitioner with information as to whether **KIRTISH CHANDULAL KARANIA** was exempted from paying stamp duty on the transfer of lands and evidence of any stamp duty paid if at all in relation to the transfer of land parcel No. NDUMBERI/NDUMBERI/3460 in favour.*

e. Any other or further order(s) and/or writ(s) or direction(s) the honourable court may deem fit to grant.

2. Caroline seek that information to enable her prosecute the case at Kiambu Chief Magistrate ELC Case NO. 37 of 2019. She stated in her petition that if the afore-stated information is not supplied she stands to be prejudiced in that case before Kiambu Chief Magistrate's Court.

3. Today's ruling is in respect to Notice of Motion application dated 25th August, 2020 filed by **KIRTISH CHANDULAL KARANIA (Kirtish)**. Kirtish seek by that application to be granted leave to join this application as an interested party. Kirtish is the registered owner of parcel No. NDUMBERI/NDUMBERI/3460, to which Caroline seek by this petition information over. It seems from the documents attached to the petition that, Caroline's case before Kiambu Chief Magistrate's Court ELC No. 37 OF 2019 has sued Kirtish, amongst others because she alleges she was "adversely and materially affected" by the alleged decision of the Land Control Board, the District Land Registrar Kiambu and the Kenya Revenue Authority in exempting Kirtish from paying stamp duty when the property NDUMBERI/NDUMBERI/3460 was transferred to him.

4. Although as I earlier stated that this Court was expected to rule on Kirtish's application to be joined in this petition as an interested party, when I perused the entire matter, it became clear that the information Caroline seeks in this petition touches on the process of obtaining title by Kirtish to the property NDUMBERI/NDUMBERI/3460. On that realisation it became clear to me that the jurisdiction of this petition lies elsewhere and not before this Court.

5. **Article 162(2)** of the Constitution established two courts of equal status to the High Court. These were Employment and Labour Relations court and Environment and Land Court (ELC).

6. The jurisdiction of the ELC is set out in **Section 13** of the **Environment and Land Court Act**. **Section 13(2)** of that Act provides (in part):-

"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) ...

c) ...

d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land. (Underlining mine).

7. It will be noted that Section 13 above reserves the jurisdiction to entertain disputes relating to title or any other instruments granting enforceable interest in land, amongst others. Caroline requires information relating to the alleged exemption which she alleges was given to Kirtish in obtaining title to the property NDUMBERI/NDUMBERI/3460. In my view, the power to entertain this petition squarely lies in the ELC Court.

8. I wish to rely on the decision in **NATIONAL LAND COMMISSION VS. AFRISON EXPORT IMPORT LIMITED & 10 OTHERS (2019) eKLR**, as follows:-

"It is to be noted that under Article 165(5), the Constitution expressly bars the High Court against exercising jurisdiction in respect of matters reserved for the Supreme Court or falling within the jurisdiction of the third-tier superior courts established under Article 162(2) of the Constitution. Article 165(5) of the Constitution provides thus:-

"The High Court shall not have jurisdiction in respect of matters:-

a) Reserved for the exclusive jurisdiction of the Supreme Court under this Constitution, or

b) Falling within the jurisdiction of the courts contemplated in Article 162(2)"

A plain reading of the above constitutional and statutory framework on the jurisdiction of the Environment and Land Court reveals that the Environment and Land Court which is the court contemplated under Article 162(2)(b) of the Constitution, has a broad constitutional jurisdiction to hear and determine disputes relating to the environment and the use, occupation, and title to land. The Constitution donated powers to Parliament to legislate a legal framework elaborating on that broad constitutional framework. In so doing, Parliament at Section 13(7) of the Environment and Land Court Act empowered the Court to make any order or grant any relief as the Court deems fit and just, including interim and permanent preservation orders. Parliament did not limit the jurisdiction to grant interim or permanent preservation orders to civil processes only. It simply gave the Court jurisdiction to issue preservation orders."

9. In the case **CHRISTOPHER NGUSU MULWA & 28 OTHERS VS. COUNTY GOVERNMENT OF KITUI & 2 OTHERS (2017) eKLR**, the ELC Court made it clear that the High Court and ELC Court do not have concurrent jurisdiction. This is what was stated in that case thus:-

“The position that I have taken above that the two courts cannot have concurrent or coordinate jurisdiction in disputes relating to the environment and land – whether filed as constitutional petitions or ordinary suits - is informed by the Constitution and the Supreme Court’s decision in the case of REPUBLIC VS KARISA CHENGO & OTHERS, Supreme Court Petition No. 5 of 2015 in which the court held as follows:-

“From a reading of the Constitution and these Acts of Parliament, it is clear that a special cadre of courts, with sui generis jurisdiction, is provided for. We therefore entirely concur with the Court of Appeal’s decision that such parity of hierarchical stature does not imply that either Environment and Land Court or Employment and Labour Relations Court is the High Court or vice versa. The three are different and autonomous courts and exercise different and distinct jurisdictions. As Article 165(5) precludes the High Court from entertaining matters reserved to the Environment and Land Court and Employment and Labour Relations Court, it should, by the same token, be inferred that the Environment and Land Court and Employment and Labour Relations Court too cannot hear matters reserved to the jurisdiction of the High Court.”

Consequently, and considering that a dispute relating to land and or the environment can be commenced by way of a constitutional petition, it is only the Environment and Land Court that has jurisdiction to entertain such matters. The two courts cannot have concurrent jurisdiction in such matters because they are two distinct courts.”

10. My finding hereof is that, this Court lacks jurisdiction to entertain this matter. The jurisdiction lies before ELC.

DISPOSITION

11. In view of what is stated above I make the following order:-

This matter is hereby transferred to the Environment & Land Court, Thika for hearing and determination.

RULING DATED and DELIVERED at KIAMBU this 19th day of April 2021.

MARY KASANGO

JUDGE

Coram:

C/A : Kevin

For the petitioner..... N/A

For the Proposed interestedMr. Kaburu HB for Mr. Ngari

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE