



REPUBLIC OF KENYA

IN THE HIGH COURT

AT ELDORET

CRIMINAL APPEAL NO 12 OF 2012

DOMINIC KIMARU TANUI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By a notice of motion dated 24th October 2016 and a supporting affidavit, **DOMINIC KIMARU TANUI** (the applicant) seeks to be allowed to file his appeal out of time on grounds that the court which heard and determined his appeal was not properly constituted and was fundamentally and irredeemably flawed. It is contended that the judge who heard the appeal was appointed only to sit in judgment on matters touching land and environment, and not criminal matters. It is also argued that the appeal has overwhelming chances of success

2. The DPP offered no response preferring that the court makes its decision on the matter.

3. The broad jurisdiction of the **Environment and Land Court** is donated by **Article 162 of the Constitution** which establishes the **three tiers of Kenya's Superior Courts** and provides thus:

- 1) **The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2)**
- 2) **Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-**
 - a) **employment and labour relations; and**
 - b) **The environment and the use and occupation of, and title to, land.**
- 3) **Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2)**
- 4) **The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.**

6. **In the discharge of the mandatory obligation placed on it by the Constitution, Parliament enacted the Environment and Land Court Act and set out in details, the jurisdiction of the Court. Section 13 of the Act outlines the jurisdiction of the court as follows:**

Jurisdiction of the Court

The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land. 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 interest in land; and

e) any other dispute relating to environment and land.

4. In a bid to handle the backlog of criminal appeals bedevilling the High Court, the former **Chief Justice, Dr. Willy Mutunga, declared the 14th to 18th October, 2013 to be a “Judicial Service Week”** dedicated to the hearing of criminal appeals in the High Court and by **Gazette Notice No. 13601, dated 4th October, 2013**, empanelled Judges of the ELC and ELRC to sit with Judges of the High Court, to hear and determine criminal appeals during that week. The appeal in this instance was heard by **Justice Sila Munyao of the Environment and Land Court**, at a time when the Chief Justice was of the view that courts of equal status had authority to seal with criminal matters.

5. Art 162 of the constitution further provides that:

In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including-

- a) interim or permanent preservation orders including injunctions;
- b) prerogative orders;
- c) award of damages;
- d) compensation;
- e) specific performance;
- f) restitution; or
- g) declaration; or
- h) costs

6. The Supreme Court of Kenya in **SC Petition No 5 of 2015 R v Karisa Chengo and 2 Others** confirmed the position taken up by the Court of Appeal in its determination, held that though the High Court, the Employment and Labour Relations Court, and the Environment and Land Court Are Courts of equal status, they are different Courts standing in their distinct autonomies, each exercising a special dedicated jurisdiction. The Supreme Court agreed that that it was only the High Court that was vested with jurisdiction to hear and determine criminal appeals from the Magistrates’ Courts. It therefore upheld the contention that a Judge appointed as a Judge of the Environment and Land Court, had no jurisdiction to sit on criminal appeals declared the proceedings a nullity and directed that the appeals be re-heard by Judges of competent jurisdiction.

7. The writing is on the wall, and I cannot reinvent the wheel. The application is granted, and leave is granted to the applicant to file his appeal out of time, as the initial appeal is rendered null and void courtesy of the **Karisa Chengo** decision. The applicant is directed to file his appeal within 14 days from today

Delivered and dated this 4th day of August 2020 at Eldoret

H.A. Omondi

Judge