



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CIVIL APPEAL NO. 44 OF 2007**

**PHYLICE AYOTI.....APPELLANT**

**VERSUS**

**SAMSON OPICHA.....RESPONDENT**

***(An appeal arising from the decision of the Provincial Land Disputes Tribunal, in Kakamega Case No. 30 of 2005)***

**RULING**

1. The Constitution 2010, at Article 162(2), establishes a special court to handle disputes that revolve around the environment and the use and occupation of and title to land. Article 165(5) of the same Constitution strips the High Court of jurisdiction over such matters.

2. For avoidance of doubt, Article 162(2) states as follows: –

*‘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. On the other hand, Article 165(5) of the Constitution states as follows: -

*‘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).’*

4. In obedience to Article 162(2) of the Constitution, Parliament did, through the Environment and Land Court Act, No. 19 of 2011, establish such a court, known as the Environment and Land Court. The jurisdiction of the Environment and Land Court is set out in section 13 of the Environment and Land Court Act. The said court has exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution, relating to environment and land.

5. According to the record of appeal, the dispute before the tribunal revolved around ownership of a property known as E/W/Malaha/166. In the end the tribunal directed how the land was to be shared out between the two disputants. On appeal the Provincial Appeals Committee upheld the verdict of the Land Disputes Tribunal. That decision was subsequently made an order of the court. The said proceedings had been conducted under the provisions of the Land Disputes Tribunals Act, Cap 303A, Laws of Kenya, which has since been repealed.

6. The High Court no longer has jurisdiction over matters revolving around ownership of or title to and occupation and use of land. That jurisdiction lies with the Environment and Land Court. I shall accordingly order that the appeal herein be transferred to the Environment and Land Court at Kakamega for disposal. It is so ordered.

**DATED, SIGNED and DELIVERED at KAKAMEGA this 10<sup>th</sup> DAY OF April, 2019**

**W. MUSYOKA**

**JUDGE**