



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

CIVIL APPEAL NO. 4 OF 2016

PAUL GICHURI KARIUKI.....1ST APPELLANT

CHRISTOPHER WERUWA WAHOME.....2ND APPELLANT

VERSUS

WANGUI KARIUKI.....RESPONDENT

RULING

This appeal was set for delivery of the judgment today the 20th April, 2018; however, when I retreated to write it, I realised that the original dispute in the magistrate's court is one that squarely falls within the category of those disputes defined in Article 162 (2) (b) of the Constitution. Lest we forget Article 162 of the Constitution establishes superior courts which are part the system of courts in Kenya; it names the superior courts as the Supreme Court, the Court of Appeal, the High Court and the Courts with the status of the High Court to determine, first, the disputes relating to employment and labour; and, second, such disputes as relate to the environment, use of, occupation and title to land. In its own words the Article states as follows:

162. (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned 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.

Of particular interest in this ruling is Article 169(2) (b) and (3) of the Constitution. Following the provisions of Article 162 (2) Parliament enacted the Environment and Land Act, 2011 whose section 13 stipulates relatively in comprehensive terms the extent of the jurisdiction of the Environment and Land Court; for better understanding, it is necessary that I reproduce the section verbatim. It says:

13. (1) 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 written law relating to environment and land.

(2) In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes relating to environment and land, including disputes?

(a) relating to environmental planning and protection, trade, 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 interests in land; and

(e) any other dispute relating to environment and land.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to the environment and land under Articles 42, 69 and 70 of the Constitution.

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

(5) The Court shall have supervisory jurisdiction over the subordinate courts, local tribunals, persons or authorities in accordance with Article 165(6) of the Constitution.

(6) For the purposes of subsection (7)(b), the Court may call for the record of any proceedings before any subordinate court, body, authority or local tribunal exercising judicial or quasi-judicial functions, or a decision of any person exercising executive authority referred to in subsection (7)(b), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

(7) 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;

(g) restitution;

(h) declaration; or

(i) costs.

And following the establishment of the Environment and Land Court the Honourable Chief Justice made practice directions which were gazetted in Gazette Notice No. 5178 of 28th July, 2014 with respect to, *inter alia*, proceedings relating to the environment, the use and occupation of and title to land. As far as those directions are relevant to this ruling, they provide that magistrates' courts shall continue to hear and determine all cases relating to the environment and the use and occupation of, and title to land (whether pending or new) in which the courts have the requisite pecuniary jurisdiction. As far as appeals from these courts are concerned, the directions are categorical that appeals from the Magistrates Courts and Tribunals shall lie in the Environment and Land Court pursuant to Section 13 (4) of the Environment and Land Court Act.

The law is thus explicit and leaves no room for doubt on the nature of disputes that the Environment and Land Court is seized of in exercise its original or appellate jurisdiction albeit limited to those matters for which it is established.

The dispute whose judgment is the subject of appeal is either of occupation or use of, tenure or otherwise title to land; the relevant parts of the claim are stated in these terms:

3. At all material times, the plaintiffs are registered proprietors of the unexpired term of the leasehold interest comprised in L.R. NO. NYERI/MUNICIPALITY BLOCK II/221.

4. The plaintiffs state that the Defendant has without any shred/colour of right, have(sic) remained, continued trespassing, occupying and/or working the above-described property thereby denying them their proprietary rights and/or occasioning them loss of user.

The plaintiffs then prayed for vacant possession, *mesne profits* and general damages all combined into a single prayer.

In the face of this material before me, I am persuaded that although this appeal was admitted and directions taken for its hearing in this Court, it ought to be heard and determined in the Environment and Land Court. I am also convinced that it is not too late to transfer it there. Accordingly, I direct that this file be transferred to the Environment and Land Court forthwith for hearing and determination or for such other directions orders as that court will deem fit to issue.

Signed, dated and delivered in open court this 20th day of April, 2018

Ngaah Jairus

JUDGE