



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISCELLANEOUS CIVIL CASE NO. 4 OF 2018

ROSE ODHIAMBO ORACHO.....1ST APPLICANT

GEORGE OMOLO ORACHO.....2ND APPLICANT

MAURICE OTIENO ORACHO.....3RD APPLICANT

VERSUS

JAMES ORACHO WIRE.....1ST RESPONDENT

ANJELINE MAFFAT APONDI.....2ND RESPONDENT

YAN LODWAR JAYASNESS.....3RD RESPONDENT

THE REGISTRAR BONDO SUB COUNTY LAND ADJUDICATION &

SETTLEMENT OFFICER BONDO SUBCOUNTY.....4TH RESPONDENTS

(FORWARDED FOR HEARING BY D.R. KISUMU BEFORE VACATION DUTY JUDGE - SIAYA)

COURT RULING:

I have considered the Applicant's Application dated 29.8.2018 under certificate of urgency, to be heard during the Recess. I certify it as urgent for consideration during the recess.

On the prayer for stay of proceedings in Misc. ELC 87/2018 at Siaya P.M's Court, I observe, quite clearly that the ELC matter pending before the P.M's Court and being heard by Mr. T. Olando – SRM is a dispute relating to land Parcel No. Bondo/Usenge/2140. In Paragraph 10 of the plaint filed and dated 22.3.2018, the plaintiff seeks for an order restraining the defendant from entering, interfering, trespassing, constructing and/or in any way dealing in Land Parcel No. Bondo/Usenge/2140 and that any transaction entered into in-respect of the said land be declared null and void.

That being the case, any appeal arising from Judgment or Orders made from the ELC matter for which the SRM's Court has Jurisdiction to hear and determine can only be made in the Environment and Land Court which has jurisdiction to hear and determine such disputes relating to title, ownership, use occupation of land and/or Environment.

Article 162 (2) (a) of the Constitution is very clear that such disputes can only be heard and determined by a Court exercising environment and land jurisdiction.

In addition, **Article 165 (5) (b) of the Constitution** is clear that the High Court is expressly barred from hearing and determining dispute, reserved for the Courts established under **Article 162 (2) of the Constitution**.

Section 13 of the Environment and Land Court on the other hand expressly confers on the ELC Jurisdiction both original and Appellate to hear and determine disputes contemplated in **Article 162 (2) (a) of the Constitution**. That being the case, under no circumstances would this Court, being a High Court, preside over an ELC matter whether by way of an appeal or otherwise as expressed in the **Karissa Chengo case by the Supreme Court Jurisdiction** is everything without which, a Court of Law must down its tools. For that reason, I must down my tools and say no more than advise the Applicant to approach the Court vested with jurisdiction which Court is the ELC which has the same the same status as the High Court and which has the Jurisdiction to hear and determine application of this nature.

Albert this is a recess period, ELC Judges in the region have their own duty roster hence the idea of there being no Judge does not arise.

The Court therefore declines to entertain the application filed in the High Court. It is hereby struck out with no orders for costs.

Dated, Signed and Delivered at Siaya this 30th day of August, 2018.

R. E. ABURILI

JUDGE