

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CIVIL APPEAL NO. 22 OF 2016

JOHN AWUOR ABILA.....APPELLANT

-versus-

JOANES OJWANG.....RESPONDENT

(Being an appeal arising from the ruling and order by Hon. M. M. Wachira, Resident Magistrate in Migori Chief Magistrate's Civil Case No. 2074 of 2015 delivered on 21/04/2016)

RULING

1. Upon a careful consideration of the record in this appeal, I have noted that this matter, although a special damage claim, is centered on whether the Respondent herein, **Joanes Ojwang**, was indeed the owner of the parcel of land known as **Suna East/Area 'B' Kwa/470** and whether the Appellant, **John Awuor Abila**, trespassed into the said land and harvested the trees thereon. The Plaintiff, the Statement of Joanes Ojwang and the Draft Statement of Defence are clear on that.

2. Having addressed my mind to **Articles 165(5) and 162(2)** of the **Constitution** and **Section 13** of the **Environment and Land Court Act**, I find that the dispute is hence in the realm of the Environment and Land Court.

3. Flowing from **the Supreme Court of Kenya** decision in **Republic vs. Karisa Chengo & 2 others Petition No. 5 of 2015 (2017) eKLR** I hereby decline jurisdiction over this matter and direct that the same be placed before the Environment and Land Court for further dealing.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 23rd day of November, 2018.

A. C. MRIMA

JUDGE

Ruling delivered in open court and in the presence of: -

Mr. Omonde Kisera Counsel instructed by the firm of Messrs. Omonde Kisera & Co. Advocates for the Appellant.

Mr. Jura Counsel instructed by the firm of Messrs. Kerario Marwa & Co. Advocates for the Respondent.

Evelyne Nyauke – Court Assistant