



**REPUBLIC OF KENYA**

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

**ENVIRONMENT & LAND COURT MISC NO. 7 OF 2017**

**MWASIYA MUTHANEIYA KITENGU.....APPLICANT**

**VERSUS**

**1. MUTHAMBI KITENGO**

**2. MUTUA MUTAVA**

**3. MUNEENI MUTAVA.....RESPONDENTS**

**.RULING**

**INTRODUCTION**

Mwasya Muthangya Kiteng'u the Appellant herein has filed the application dated 22<sup>nd</sup> March 2017, seeking the transfer of SRMCC No. 21 of 2015 (Kyuso) from Kyuso Law Courts to Environment and Land Garissa for hearing and determination.

The reasons given for the transfer are that due to the changes in law, all matters touching on land use ownership occupation and title to land have to be heard by the environment and land court.

The applicant also intends that the lower court has no jurisdiction to hear and determine land matters including the one sought to be transferred to this Hon. Court. The same reasons given in the face of the said application are in the supporting affidavit sworn the same date.

When the application came up for interparties hearing the Respondent had not filed any response in opposition thereto.

There was also non-attendance on the part of the Respondents.

**APPLICABLE LAW**

Section a of the magistrate's court Act No. 26 of 2015 laws of Kenya sets out the jurisdiction of magistrate's court as follows:-

“A magistrate's court shall

- (a) In the exercise of the jurisdiction conferred upon it by section 26 of the Environment and land Court Act (cap. 12A) and subject to the pecuniary limits under section 7(1) hear and determine claims relating to

- (i) Environmental and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals, and other natural Resources.
- (ii) Compulsory acquisition of sand.
- (iii) Land administration and management.
- (iv) Public, private, and community land and contracts, choses in action or other instruments granting any enforceable interests in land and
- (v) Environment and land generally.

In a recent statement law amendment (Miscellaneous Amendment) Act no. 25 of 2015 the law provides as follows:-

**“The Environment and Land Court established in the environment and Land Court Act and the subordinate courts as empowered by any written law shall have jurisdiction to hear and determine disputes, actions, and proceedings concerning land under this Act.”**

Having highlighted the relevant sections of the law giving jurisdiction to magistrate’s courts to handle environment and land matters the application dated 22<sup>nd</sup> March 2017 lacks merit. Suffice to say that this court is alive to the two appeal case pending before the court of Appeal being Criminal Appeal No. 287 of 2016 and Criminal Appeal No. 3 of 2017 respectively. The two appeals arise from the decision of a three judge bench comprising Hon Emukule, Hon. Chitembwe and Hon. Mugure Thande J J who had ruled that magistrates have no pecuniary jurisdiction to hear and determine environment and land matters.

That decision was challenged by the Appellants and the court of Appeal granted a temporary stay orders pending the hearing and determination by the two Appeals. As we speak the jurisdiction of magistrate’s to hear and determine an environment and land matter was restored. It is therefore incorrect to say that magistrates have no jurisdiction to hear and determine environment and land cases. I therefore find and hold that until the pending Appeals are heard and determined, magistrate’s courts are cloned with the requisite jurisdiction to hear and determine disputes relating to environment and land subject to pecuniary limitations as decided by the Hon. Chief Justice of the Republic of Kenya. As such the application dated 22/3/2017 is hereby dismissed. Since the Respondent did not file any response nor during the hearing I make no order as to costs.

**READ and DELIVERED and signed in the open court this 27<sup>th</sup> day of July 2017.**

**E. C. Cheronno (Mr) ELC Judge**