

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL APPEAL 62 OF 2009

JOEL KITHAKA MARINGA.....APPELLANT

VERSUS

SAMUEL KIVUTI CIRIBA.....RESPONDENT

RULING

1. This is an application under certificate of urgency brought by the applicant under the provisions of section 3A of the Civil Procedure Act (Cap 21) Laws of Kenya and under section 11 (4) of the Advocates' Act and under all other enabling provisions of the law. The applicant sought stay of execution of the order of the Deputy Registrar before whom the matter was proceeding under Order 49 of the 2010 Civil Procedure Rules. The applicant was granted a stay of the proceedings pending before the Deputy Registrar.

2. During the inter-partes hearing, counsel for the respondent raised a preliminary objection stating that this court has no jurisdiction to entertain the matter because the same was properly before the Deputy Registrar and had not been finalized. He therefore urged the court to dismiss the application.

3. Since the issue of jurisdiction was raised by the respondent, it is settled legal practice to determine it before proceeding to the merits of the application. I have perused the supporting affidavit and the chamber summons of the applicant. According to the applicant, *"the costs in issue were awarded in an appeal from a ruling whose main suit is still pending before the Environment and Land Court at Embu"*.

4. The costs from which these proceedings arose were awarded to the decree holder following a judgement of the High Court (Ong'udi J.) which was handed down on 18th December 2012. That court ordered transfer of the suit reference No. CMCC No. 206/2007 to the Environment and Land Court Kerugoya High Court for hearing and determination on 18th December 2012.

5. Following that order of transfer dated 18th December 2012, the court that was seized with jurisdiction of the matter from that date was the Environment and Land Court. In other words, the High Court ceased to have jurisdiction in the matter. Any incidental or connected issues such as the instant matter arising therefrom should be have been dealt with by the Environment and Land Court.

6. In the circumstances, this matter is transferred to the Environment and Land Court for further orders. It therefore follows that the interim orders made by this court are hereby vacated.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **29th** day of February 2016

In the presence of Mr Andande for the applicant and in the absence of Mr. Njagi Wanjeru for the Respondent

Court clerk Njue

J.M. BWONWONGA

JUDGE

29/02/2016