

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NUMBER 198 OF 2011

CECILIA NJOKI MAINA.....APPELLANT

VERSUS

JANE WAMBUI WAHOME.....RESPONDENT

(Appeal Arising against the Judgment of the Principal Magistrate Hon. T. Matheka – Principal Magistrate

delivered on 27th October 2011 in Nyahururu PMCC No. 151 of 200)

DIRECTIONS BY THE COURT

1. The trial court case **Nyahururu PMCC Number 151 of 2006** was a dispute as to the use, occupation and Title of Land Parcel Number **Nyahururu Municipality Block 6/435**.

After a full trial, judgment was delivered on the 27th October 2011 in favour of the plaintiff, now the Respondent. Being dissatisfied with the said judgment and decree of the trial court she preferred an appeal vide a Memorandum of Appeal dated 14th November 2011 and filed on the 18th November 2011.

Directions were taken as to the manner of hearing of the appeal and parties agreed to file written submissions which they have done. However, at the time of taking the directions, it was not brought to the attention of the court that the subject of the appeal concerned the use occupation and title to land.

2. The Environment and Land Court was established by **Act Number 19 of 2011** and its mandate and jurisdiction relates to the use, occupation and title to land. Practice Directions issued by the Honourable The Chief Justice and gazetted as **Notice Number 5178** on proceedings relating to the Environment and Land Court directed that land matters filed at the High Court and pending for hearing shall be transferred to the Environment and Land Court as may be directed by the Judge.

This appeal having arisen from the lower court on matters concerning use and occupation of land ought to have been directed for hearing by the Judge of the Environment and Land Court who is seized with the necessary jurisdiction to hear and determine land issues.

3. The High Court has no jurisdiction whatsoever to hear and determine land cases or appeals arising from land cases unless the said cases or appeals are part-heard by the High Court as stated in Paragraph 4 of the practice directions alluded to above. See **Samuel Kamau Macharia -vs- KCB & 2 Others (2012) KLR** where it is stated that jurisdiction flows from either the constitution or legislation, and a court cannot arrogate to itself jurisdiction exceeding that which is conferred to it.

To that extent, this court has no jurisdiction to hear the appeal hereof. The appeal is not part heard by this court. It is transferred for hearing and determination to the Environment and Land Court.

Parties may proceed to take a mention date before the Judge of Environment and Land Court for directions on the hearing of the appeal.

Dated, signed and delivered in open court this 17th day of March 2016.

JANET MULWA

JUDGE