



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
MISC CIVIL APPLICATION 20 OF 2016

KITHU MUCAMO alias KITHU MUCHUNGU.....APPLICANT

VERSUS

MOFFAT NYAGA KAGAU.....RESPONDENT

RULING

1. This is an application for leave to appeal out of time arising out of a land dispute in which the defendant was ordered to be evicted from land parcel No. Mbeti/Gachuriri/445.
2. I notified counsel for the applicant on the issue as to whether this court has jurisdiction to entertain the application. His response was that he was not certain as to whether this court has jurisdiction. He further submitted that if the court did not have jurisdiction, the same may be transferred to the Land and Environment Court for hearing and determination.
3. The jurisdiction to hear and determine land disputes is derived from **section 13 (2) of the Environment and Land Court Act**. That section provides as follows:

“(2) In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the court shall have power to hear and determine disputes-

- a) ***Relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;***
- b)
- c)

“(3) Nothing in this Act shall preclude the court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.

4. The foregoing statutory provisions have been judicially approved by the **Court of Appeal in *Karisa Chengo, Jefferson Kalama Kengha & Kitsao Chao Ngati v. Republic (2015) eKLR***. According to that case land disputes should be resolved only by judges who are appointed as judges of the Environment and Land Court and not judges of the High Court.
5. It is clear from the foregoing provisions that this is an application arising out of a land dispute. In the circumstances, the proper court that is vested with jurisdiction to hear and determine the instant

application is the Environment and Land Court.

6. In view of the foregoing, this application is transferred to the Environment and Land Court at Kerugoya for further directions.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this 27th day of April 2016

In the presence of Ms Ndorongo holding brief for Mr. Mwaniki for the Applicant and in the absence of the Mr Andande for the Respondent.

Court clerk Njue

J.M. BWONWONGA

JUDGE

27/04/2016