



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 458 OF 2008

ABDI KADIR HUSSEIN.....PLAINTIFF

VERSUS

MOSES KIPKIRUI KOROS1ST DEFENDANT

NANCY CHERONO BUNEI.....2ND DEFENDANT

TELEPOSTA PENSION SCHEME

REGISTERED TRUSTEES.....1ST INTERESTED PARTY

PETER KINGORI MAINA.....2ND INTERESTED PARTY

ESTHER ONSEMBE.....3RD INTERESTED PARTY

AMOS K.C. KALE MAINA & STEVE K. BUNDOTICH

T/A KALE MAINA & CO. ADVOCATES.....4TH INTERESTED PARTY

RULING

This suit was instituted vide plaint dated 16th October 2008 on the same day. The plaintiff’s claim against the 1st and 2nd defendants is eviction from land No. LR Nairobi/Block 34/160 unit No.2 ; a declaration that the 1st and 3rd defendants occupy the suit premises illegally; costs and any other remedy deemed just and expedient .

Albeit the suit was instituted before 2010 when the new constitution was promulgated, Article 162(2) (b) of the Constitution is clear that disputes relating to occupation, ownership or title to land shall be heard and determined by the court contemplated therein. In addition Article 165(5) (b) of the Constitution expressly ousts the jurisdiction of the High Court from hearing and determining disputes preserved for the court contemplated in Article 162(2) of the Constitution.

That being the case, it is crystal clear that the jurisdiction of the this court is ousted and vested in the Environment and Land Court as established under Section 4 of the Environment and Land Court Act, 2011. Section 13 (1) of the said Act spells out the jurisdiction of the court. Under Subsection (7) thereof, the orders that the court is empowered to make are stipulated.

For the above reasons, and as jurisdiction is everything, without which, this court would be acting in vain. The matter is not part heard to invite the discretion of this court to continue with it under Section 22 of part 5 of the transitional and consequential provisions of the Constitution on administration of justice. Furthermore, there is established a court of competent jurisdiction, the ELC which is fully operational and therefore the transitional period is spent. Accordingly, I must down my tools and say no more than refer this matter to the court with competent jurisdiction to hear and determine this dispute and that court is the Environment and Land Court, Nairobi.

Orders accordingly.

R.E. ABURILI

JUDGE

20/4/2016