

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 303 OF 2011

MATHEW NDAU KIAMBATI.....APPELLANT/RESPONDENT

VERSUS

JAMES GICHUKI MAGONDU.....1ST RESPONDENT/APPLICANT

EMBAKASI RANCHING COMPANY LIMITED.....2ND RESPONDENT

RULING

This appeal is listed today for the hearing of an application dated 29th January 2016 for dismissal of the appeal for want of prosecution. However, upon my perusal of the file, I note that the cause of action relates to a dispute over the ownership/occupation and or title to land. The subject land is described as plot No. 124B, 125B, 126B, 127B RUAI, Nairobi. The prayers by the plaintiff **MATHEW NDAU KIAMBATI** who is the respondent herein against the defendants/appellants **JAMES GICHUKI MAGONDU** and **EMBAKASI RANCHING COMPANY LIMITED** as per the plaint dated 18th November 2005 were for a permanent injunction restraining the defendants by themselves, their agents and or servants from trespassing find or interfering and or dealing in any manner with the plaintiff's plot Nos.12B,125B,125B, 126B and 127B situated in RUAI-NAIROBI.

In view of the above, it is clear that albeit the suit in the lower court and therefore this appeal arising from the decision of the lower court was filed before the effective date of 27th August 2010 when the new Constitution was promulgated and or in the transitional period, it is clear to me that the jurisdiction of this court to hear appeals arising from disputes relating to ownership/occupation or title to land was effectively ousted by Article 165(5) (b) of the Constitution which expressly provides that the High Court shall have no jurisdiction over such disputes, which jurisdiction is vested in the Environment and Land Court as contemplated in Article 162(2) (b) of the Constitution and as provided for under Section 13(1) of the Environment and Land Court Act, 2011.

I note that this appeal was filed in 2011 vide Memorandum of Appeal dated 5th July 2011, which was in the transitional period and before the establishment and or operationalization of the Environment and Land Court. The appeal has not been heard by this court although it was admitted to hearing on 12th May 2014. The transitional period envisaged in part 5 Section 22 of the Transitional and consequential provisions of the Constitution on Administration of justice, in my view are no longer applicable in view of the establishment and full operationalization of the Environment and Land Court with the appointment of competent judges to preside over the court and hear and determine the disputes as contemplated in Article 162(2) (b) of the Constitution.

Consequently, and for want of jurisdiction, I can do no more one thing than down my tools and direct that this appeal be and is hereby placed before the Environment and Land Court for further consideration and directions on the pending issues as it may deem it just.

Orders accordingly.

Dated, signed and delivered at Nairobi this 18th day of April 2016.

R.E. ABURILI

JUDGE

18/4/2016