



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL APPEAL CASE NO. 330 OF 2014**

**ABDI ALI..... APPELLANT**

**VERSUS**

**DEVENSON MORANGA ONYIEGO.....1<sup>ST</sup> RESPONDENT**

**MORRIS OCHIENG ODHIAMBO.....2<sup>ND</sup> RESPONDENT**

**BOARD OF TRUSTEES (N.S.S.F).....3<sup>RD</sup> RESPONDENT**

**RULING**

By an application dated 31<sup>st</sup> July 2014 and filed in Court the same day, the appellant herein **Abdi Ali** sought from this court

**Orders:-**

1. Spent
2. Spent
3. A temporary order, pending the hearing, interpartes, and determination of the instant Appeal do issue to stay the Ruling and order of 10<sup>th</sup> July 2014 by the Senior Principal Magistrate Hon. R.A. Oganyo (Mrs) in instructing the court to issue a notice to show case against the appellant herein to appear in court on 26<sup>th</sup> August 2014 to show cause why he should not be punished for being in contempt of court together with all other consequential orders arising from the said decision of 10<sup>th</sup> July 2014.
4. Costs of the application

The application is brought under the provisions of Order 42 Rules 6 (6) of the Civil Procedure Rules, 2010, and Section 3A of the Civil Procedure Act.

The application is predicated on 18 grounds which can be summarized as follows:

That on 10<sup>th</sup> July 2014 the trial magistrate in CMCC 5236/2011 ordered, allowing the

respondent's/Plaintiff application dated 20<sup>th</sup> January 2014 which sought for mandatory injunction requiring the 3<sup>rd</sup> Defendant Board of Trustees of NSSF to reverse on alleged purchase and or transfer of the Plot No. Tassia II 97/21190/3210 subject of the suit and preserve the status quo as per an order of 21<sup>st</sup> November 2011.

The plaintiff Devenson Moranga Onyiengo also sought orders that the 1<sup>st</sup> Defendant/ Applicant herein was well aware of an order of the court of 21<sup>st</sup> November 2011 but that he had disobeyed the said order hence he should be punished for being in contempt of the said court order and that he should therefore be committed to civil jail for a period not exceeding 6 months.

The plaintiff also sought an order nullifying transfer of land parcel No. Tassia II 97/21190/3210 in favour of a 1<sup>st</sup> Defendant.

The record shows that despite the protest by the appellant herein that the court had no jurisdiction to hear and determine the suit and the application as the jurisdiction to hear the land matter fell squarely in the Environment and Land Court, the lower court nonetheless granted the prayers sought and issued a notice to show cause for the appellant herein to appear in court on 26<sup>th</sup> August 2014 to show cause why he should not be punished for being in contempt of court.

It is that Ruling of the trial court which provoked the appellant herein to file this appeal and the application of 31/7/2014 seeking stay of that ruling. When the matter came up before Hon. Hatari Waweru J on 31/7/2014, the learned Judge granted an interim exparte order of stay of execution of the said orders of the lower court appealed against for seven days which orders were subsequently extended.

The appellant's application is supported by his affidavit sworn on 31<sup>st</sup> July 2014 reiterating the grounds supporting the application and contending that unless the ruling of the Lower Court is stayed, this appeal shall be rendered nugatory. Further, that only the High Court or Environment and Land Court have the power under the Judicature Act, Section 5 (1), Cap 8 Laws of Kenya, to punish for contempt and not the Subordinate Court.

The application was seriously opposed by the 1<sup>st</sup> Respondent who swore an affidavit on 4<sup>th</sup> September 2014 maintaining that the transfer of the suit title of land was effected during the subsistence of valid court orders and barring any such transaction, the Magistrate was within her powers to order for revocation of the transfer to maintain the status quo. Further, that the court had granted a temporary injunction restraining the appellant from dealing with the suit property but that contrary to the subsisting court orders, the appellant went ahead to cause its transfer hence the court was right in ordering that he appears to show cause why he (the appellant) should not be punished for contempt of court orders. The 3<sup>rd</sup> Respondent too filed replying affidavit on 21<sup>st</sup> November 2014 Supporting the appellant's position that the Lower Court had no jurisdiction to make orders that it did, subject matter of this appeal.

The parties agreed to dispose of this application by way of written submissions. The 3<sup>rd</sup> Respondent filed on 21/11/2014, the appellant filed on 3/12/2014 and the 1<sup>st</sup> Respondent filed his on 20/1/2015.

Each party relied on decided cases.

I have carefully considered the appellant's application, replies, and submissions filed by all the parties to the appeal herein.

I have only one issue to determine which is, whether this court has jurisdiction to hear and determine this appeal and therefore, the application for stay of enforcement of the ruling of the Lower Court pending hearing and determination of the appeal.

I commence from that premise knowing that one of the primary issues and grounds of appeal is that the lower court had no jurisdiction to hear an application for contempt of court. I however, decline to make a

finding on that specific ground and issue and determine whether this court has the jurisdiction to entertain the matter as presented.

From the record, it is trite that the dispute concerns ownership and or title to land parcel No. Tassia II 97/21190/3211 and 97/21190/320.

That being the case, this court is devoid of jurisdiction to hear and determine any appeal or application relating to a dispute which, in my humble view, falls within the jurisdiction of the court contemplated in Article 162 (2) (b) of the Constitution. Under the said Article, only the Environment and Land Court as established under the Environment and Land Court Act, 2011, has the jurisdiction both original and appellate, to hear and determine disputes relating to ownership, occupation, the use of and title to land. That jurisdiction is further conferred by Section 13 (1) of the said Act.

Furthermore, Article 165 (5) (b) of the Constitution expressly ousts the jurisdiction of the High Court from hearing and determining disputes falling within the jurisdiction of the Environment and Land Court.

Concerning the matter pending before the Lower Court, this court observes that it was filed in 2011 before the Environment and Land Court was established and or fully operationalized.

That being the case the 1<sup>st</sup> Respondent may not have had any court of choice to file the suit as then it was during the transition period from the old to the new constitutional dispensation pursuant to the provisions of Section 22 part 5 of the Transitional and consequential provisions of the Constitution 2010.

However with the appointment of Judges to the Environment and Land Court in 2012, the transitional provisions were spent and therefore any matter pending before any Court that relates to the dispute concerning ownership/occupation or title to land has to be transferred to the Environment and Land Court. To do otherwise would be usurping the Constitutional mandate of that court which is exclusive.

For those reasons, I decline to hear and determine the application as filed on merits and direct that the whole file herein be placed before the presiding Judge of the Environment and Land Court for Directions/Orders as she may deem fit and as to the hearing of the application and or the appeal.

**Dated, Signed and Delivered at Nairobi this 20<sup>th</sup> day of April, 2015**

**R.E. ABURILI**

**JUDGE**

**20/4/15**

**Coram : Aburili J**

**CC- Kavata**

**Mr. Momanyi for 1<sup>st</sup> Respondent**

**Miss Kithuma holding brief for Kinyanjui for 2<sup>nd</sup> & 3<sup>rd</sup> Respondent**

**Mr. Dar holding brief for Mr. Oloo for 2<sup>nd</sup> Defendant**

**N/A for applicant**

**Court- Ruling read and pronounced in open court as scheduled.**

**R.E. ABURILI**

**JUDGE**

**20/4/2015**

**Court- Mention on 11/5/2015 before the Presiding Judge of the Environment and Land Court.**

**Parties informed accordingly.**

**R.E. ABURILI**

**JUDGE**

**20/4/2015**