



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CONSTITUTIONAL PETITION NO. 15 OF 2015

ERNEST KEVIN LUCHIDIO PETITIONER

VERSUS

- 1. HON. ATTORNEY GENERAL**
- 2. ZACHARY NDUNDE**
- 3. BENJAMIN LUTTA RESPONDENTS**

RULING

Introduction:

1. When the Petitioner filed the Petition dated 29/06/2015 simultaneously with the Notice of Motion duly dated which application was brought under a Certificate of Urgency, this Court on its own motion directed service upon the Respondents so that parties address the Court on the issue of jurisdiction.
2. Thereafter all the parties rendered their submissions where the Petitioner maintained that this Court is appropriately vested with the jurisdiction in this kind of a constitutional matter. The Respondents however had the contrary view. It is on the basis of the opposing views that resulted to this ruling.

Background:

3. The Petitioner represented by Mr. Shifwoka Counsel submitted that under **Article 165(3)(b)** it is only the High Court which is vested with the jurisdiction to deal with matters on constitutional interpretations and violations of the Bill of Rights. He buttressed his argument **on Rules 4 and 7** of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereinafter referred to as “*the Rules*”). He also referred to **Section 3(1)** of the Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya) arguing that it was the intention of the lawmakers to refer such a matter to the High Court and not to any other Court. While agreeing with the creation of the Environment and Land Court as a Court of equal status as the High Court, Counsel argued that its jurisdiction did not encompass the dealing with constitutional petitions since that Court was limited to dealing with suits and not petitions. It was his position that a petition is not a suit but a special way of remedying the violation and the

enforcement of rights and that is why it is not bound, unlike in all other suits, by limitation of time. He further argued that the position was clearly demonstrated in that under **Section 13** of the Environment and Land Court Act, the jurisdiction as so created does not extend to the protection of rights guaranteed under Article 40 of the Constitution and since jurisdiction is only created by the Constitution or a statute, it is not open for parties to create such a jurisdiction by implication.

4. Counsel further drew the attention of this Court to the fact that the Petition before Court was not limited to Article 40 of the Constitution but based on several other Articles including 23, 25, 27, 40, 47, 48, 50, 60 and 61 and that none of those Articles were expressly provided in the Constitution to be dealt with by the Environment and Land Court. He relied on two decisions in his arguments and in urging this Court to find that it has jurisdiction in the matter. The said decisions are Court of Appeal case of **Karisa Chengo, Jefferson Kalama Kengha & Kitsao Charo Ngati vs. Republic (2015) eKLR** and the High Court decision of **Arnacherry Limited vs. Attorney General (2014) eKLR**.
5. Mr. Tarus, Learned State Counsel appeared for the first Respondent. He briefly argued that the Petition as presented before Court left no doubt that the matter fell squarely within the parameters of the Environment and Land Court. He relied on the decision of **David N. Mugendi vs. Kenyatta University & 3 others (2013) eKLR** in urging this Court to find that the Environment and Land Court being a Court of equal status as the High Court has the jurisdiction to deal with any and all constitutional issues relating to matters falling within its mandate. He argued that the Petition presented a dispute between the parties and hence amounted to a suit since it has issues for determination. He called for the finding that this Court lacks the jurisdiction to hear and determine this Petition and to humbly transfer the same to the appropriate Court.
6. Miss Rauto Counsel appeared for the second Respondent. She associated herself firstly with the submissions of Mr. Tarus and added that the Petition is a suit in all aspects as it even has Respondents who are adversaries.
7. In a rejoinder, Mr. Shifwoka argued that Section 13 of the Environment and Land Court Act related to issues of title, tenure and compulsory acquisition and that the Petition did not relate to any of those hence the dispute stood out of the jurisdiction of the Environment and Land Court. He maintained that the Petition sought to prevent a threatened excision and transfer of land through an irregular process, a situation not encompassed under the Environment and Land Act which only provided for enforcement of environmental rights under Section 13(3). He reiterated his call that this Court was the only forum with the jurisdiction to deal with the Petition.

Analysis and Determination:

8. Jurisdiction is everything. Taking jurisdiction as a cage and a Court as an animal, the animal can, but only move within the cage. That is what jurisdiction is all about.
9. It is now settled, having been held times without number, that without jurisdiction a Court has no power to take one more step. Indeed jurisdiction is a fundamental matter in the dispensation of justice. **The Supreme Court** in the decision of **Re: The matter of the Interim Independent Electoral Commission, Constitutional Application No. 2 of 2011 (unreported)** at paragraphs 29 and 30 discussed the issue of jurisdiction in the following manner:-

“29. Assumption of jurisdiction by courts in Kenya is a subject regulated by the constitution; by statute law, and by principles laid out in judicial precedent. The classic decision in this regard is the Court of Appeal decision in Owners of Motor Vessel “Lilian S’ vs. Caltex Oil (Kenya) Limited (1989) KLR 1, which bears the following passage (Nyarangi, JA at page 14.):-

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the

issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step.”

30. The Lilian ‘S’ case establishes that jurisdiction flows from the law, and the recipient –Court is to apply the same, with any limitations embodied therein. Such a court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.”

10. In order to determine the issue at hand, there is need for an analysis of the provisions of **Articles 162 and 165** of the Constitution which establishes the superior Courts and sets out their respective jurisdiction. Article 162 provides as follows:-

“162. (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (2).

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a) employment and labour relations; and

(b) the environment and the use and occupation of, and title to, land.

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

(4) The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article. (emphasis added).

Article 165 is tailored as follows:

165. (1) There is established the High Court, which—

(a) shall consist of the number of judges prescribed by an Act of Parliament; and

(b) shall be organised and administered in the manner prescribed by an Act of Parliament.

(2) There shall be a Principal Judge of the High Court, who shall be elected by the judges of the High Court from among themselves.

(3) Subject to clause (5), the High Court shall have—

(a) unlimited original jurisdiction in criminal and civil matters;

(b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;

(c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;

(d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—

(i) the question whether any law is inconsistent with or in contravention of this

Constitution;

(ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;

(iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and (iv) a question relating to conflict of laws under Article 191; and

(e) any other jurisdiction, original or appellate, conferred on it by legislation.

(4) Any matter certified by the court as raising a substantial question of law under clause (3) (b) or (d) shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.

(5) The High Court shall not have jurisdiction in respect of matters—

(a) reserved for the exclusive jurisdiction of the Supreme Court under this Constitution; or

(b) falling within the jurisdiction of the courts contemplated in Article 162 (2).

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

11. The effect of the foregoing is that apart from the superior courts, Parliament was empowered under **Article 162(2)** of the Constitution to establish Courts with equal status of the High Court and with jurisdiction to hear and determine disputes relating to employment and labour relations and environment and the use and occupation of, and title to, land. Further the Constitution under **Article 162(3)** give Parliament the power to determine the jurisdiction of these Courts of equal status as the High Court.

12. Arising from the said constitutional mandate, Parliament enacted the Environment and Land Act, Chapter 12A of the Laws of Kenya (hereinafter referred to as “**the Act**”). The Act creates the jurisdiction of the Environment and Land Court in **Section 13** thereof and as follows:-

13.(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other written law relating to environment and land.

(2) In exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes relating to environment and land, including disputes?

(a) relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) relating to compulsory acquisition of land;

(c) relating to land administration and management;

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) any other dispute relating to environment and land.

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

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

(5) Deleted by Act No. 12 of 2012, Sch.

(6) Deleted by Act No. 12 of 2012, Sch.

(7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including?

(a) interim or permanent preservation orders including injunctions;

(b) prerogative orders;

(c) award of damages;

(d) compensation;

(e) specific performance;

(g) restitution;

(h) declaration; or

(i) costs. (emphasis added)

13. At this point in time, I wish to clearly state that the jurisdiction of the Environment and Land Court is only limited to the disputes contemplated under **Article 162(2)(b)** of the Constitution and **Section 13** of the Act and that if there may be any other disputes which relate to the environment or land but do not fall within the said constitutional and statutory confines, such disputes shall find its way to the High Court instead. To this end, I fully concur with my brother Mabeya, J in **Capital Fish Kenya Limited vs. Monnatz Limited & 2 others (2014) eKLR** when he expressed himself thus:-

“..... In this regard, my view is that the intention in the Constitution is that if an issue arises touching on land in respect of its use, possession and control, then this High Court will have no jurisdiction. If the dispute touching on land is for anything else other than which I have stated, my view is that, that dispute will be outside the jurisdiction of the Land Court”

14. The other closely related issue is of the jurisdiction of the Environment and Land Court to deal with issues relating to constitutional interpretation and enforcement of constitutional remedies especially in respect to matters which fall within the ambit of the Environment and Land Court.

15. A similar issue arose in the case of **United States International University (USIU) vs.**

Attorney General (2012) eKLR where Majanja, J dealt with it at a very great length. Although the said case related to labour issues one of the issues in contention was whether or not the Employment and Labour Relations Court as created under Article 162(2) of the Constitution has the jurisdiction to interpret the Constitution and to grant the remedies provided under Article 23 of the Constitution which remedies are clearly stated to be a sole preserve of the High Court. The Petitioner in this matter raised the exact issue save that the Court in this matter is the Environment and Land Court. As a result of the concurrence on the issue at hand, I hold that the persuasive authority by my brother Majanja, J is relevant to this case.

16. The Learned Judge expressed himself on the said issues as follows:-

“36. Unlike the provisions of the South African statute, the Industrial Court Act, 2011 is silent on the jurisdiction of Industrial Court to interpret the Constitution or to enforce fundamental rights and freedoms. In South Africa, the LRA indeed contemplates that there may be areas of concurrent jurisdiction. Likewise, Article 165 is silent whether the courts of the Status of the High Court have jurisdiction to interpret the Constitution and enforce fundamental rights and freedoms under the Bill of Rights. Does this mean that the courts with status of the High Court lack jurisdiction to interpret the Constitution in the same manner as the High Court or enforce fundamental rights and freedoms?”

37. In order to determine whether the Industrial Court has the jurisdiction to deal with matters concerning the enforcement of fundamental rights and freedoms it is important to consider the Constitution as a whole bearing in mind all provisions bearing upon a specific issue should be considered together; this is the principle of harmonization. As was held in *Olum v Attorney General of Uganda* [2002]2 EA 508, “the entire Constitution has to be read as an integrated whole and no one particular provision destroying the other but each sustaining the other. Constitutional provisions must be construed as a whole in harmony with each other without insubordinating any one provision to the other.”

38. In answering this question, a purposive approach must be adopted. On the one hand is the need to preserve and protect the objective of creating a specialist employment and labour relations court for which Article 162(2) was enacted. In *Re Reference Public Service Employee Relations Act* [1987] 1 SCR 313, 1987 CanLII 88 (SCC), at paragraph 182 McIntyre J, observed that, “Labour law . . . is a fundamentally important as well as extremely sensitive subject. It is based upon a political and economic compromise between organised labour - a very powerful socioeconomic force - on the one hand, and the employers of labour – an equally powerful socioeconomic force - on the other. The balance between the two forces is delicate. . . .”

39. The other consideration is to maintain the jurisdiction of the High Court as the guardian of fundamental rights and freedoms. In this respect, reference was made to the provisions of Article 23(1) and (2) which provide as follows;

23. (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

(2) Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

40. It was argued since Article 23(3) only empowers the legislature to enact legislation to give original jurisdiction to subordinate court, it follows that Parliament cannot grant courts of the status of the High Court original jurisdiction in the absence of a specific provision to that effect. In my view, the jurisdiction of the High Court is not governed by Article 23 but by Article 165 and the conferring of the Industrial Court the Status of the High Court as superior courts are covered by Article 165 to the extent of their defined subject-matter jurisdiction.

41. *Labour and Employment rights are part of the Bill of Rights and are protected under Article 41 which is within the province of the Industrial Court. To exclude the jurisdiction of the Industrial Court from dealing with any other rights and fundamental freedoms howsoever arising from the relationships defined in section 12 of the Industrial Court Act, 2011 or to interpret the Constitution would lead to a situation where there is parallel jurisdiction between the High Court and the Industrial Court. This would give rise to forum shopping thereby undermining a stable and consistent application of employment and labour law. Litigants and ingenious lawyers would contrive causes of action designed to remove them from the scope of the Industrial Court. Such a situation would lead to diminishing the status of the Industrial Court and recurrence of the situation obtaining before the establishment of the current Industrial Court*

42. *Article 19 provides that the Bill of Rights is an integral part of the framework of Kenya's democratic state and is the framework for social, economic and cultural policies. The necessity of having the Industrial Court deal with matters of fundamental rights and freedoms as part of the jurisdiction to resolve labour disputes is to infuse into employment and labour relations the values and essence of the Bill of Rights. The fact that the content of labour rights protected under Article 41 is reiterated in the Employment Act, 2007 and Labour Relations Act, 2007 does not create a separate wall of jurisdiction for the High Court and the Industrial Court as contended by Mr Obura. The reiteration of these rights is merely a consequence of Article 19 and recognition of their universality and indivisibility in application is all spheres of labour and employment law.*

43. *The intention to provide for a specialist court is further underpinned by the provisions of Article 165(6) which specifically prohibits the High Court from exercising supervisory jurisdiction over superior courts. To accept a position where the Industrial Court lacks jurisdiction to deal with constitutional matters arising within matters its competence would undermine the status of the court. Reference of a constitutional matter to the High Court for determination or permitting the filing of constitutional matters incidental to labour relations matters would lead to the High Court supervising a superior court. Ordinarily where the High Court exercises jurisdiction to interpret the Constitution or enforce fundamental rights, its decisions even where declaratory in nature will require the court to follow or observe the direction. This would mean that the High Court would be supervising the Industrial Court which is prohibited by Article 165(6).*

44. *In the final analysis, I would adopt the position of the Constitutional Court of South Africa in Gcaba v Minister of Safety and Security (Supra). The Industrial Court is a specialist court to deal with employment and labour relations matters. By virtue of Article 162(3), section 12 of the Industrial Court Act, 2011 has set out matters within the exclusive domain of that court. Since the court is of the status of the High Court, it must have the jurisdiction to enforce labour rights in Article 41 and the jurisdiction to interpret the constitution and fundamental rights and freedoms is incidental to the exercise of jurisdiction over matters within its exclusive domain. In any matter falling within the provisions of section 12 of the Industrial Court Act, then the Industrial Court has jurisdiction to enforce not only Article 41 rights but also all fundamental rights ancillary and incidental to the employment and labour relations including interpretation of the Constitution within a matter before it.*

45. *In light of what I have stated, I find and hold that the Industrial Court as constituted under the Industrial Court Act, 2011 as court with the status of the High Court is competent to interpret the Constitution and enforce matters relating to breach of fundamental rights and freedoms in matters arising from disputes falling within the provisions of Section 12 of the Industrial Court Act, 2011.*” (emphasis added).

17. It is instructive to note that the Court of Appeal has also had an occasion to address itself on the very issue. That was in the case of **Daniel N. Mugendi vs. Kenyatta University & 3 others (2013)e KLR**. In allowing an appeal and setting aside an order of Mumbi, J dismissing a suit on

the finding that the Industrial Court was not possessed of jurisdiction to interpret the Constitution and to grant the remedies provided under Article 23 of the Constitution, the Court of Appeal referred to and approved the finding of Majanja, J in the **United States International University case (supra)**.

The Court of Appeal duly went ahead and settled the issue in **toto** in respect to such matters within the jurisdiction of both the Employment and Labour Relations Court as well as those before the Environment and Land Court.

18. The Court of Appeal expressed itself in the following words:-

“The learned judge had in the proceedings before him been addressed on the aspect where it was alleged that fundamental rights relating to employment and labour (Article 41 Constitution) had been violated, and whether the Industrial Court could entertain such claims. While adopting the position enunciated in the South African case of Gcaba Vs Minister of Safety and Security & Others CCT 64/08 (2009) ZACC 26, Majanja, J proceeded:

“44. ...I would adopt the position of the Constitutional Court of South Africa in Gcaba Vs Minister of Safety and Security (Supra). The Industrial Court is a specialist court to deal with employment and labour relations matters. By virtue of Article 162(3), section 12 of the Industrial Court Act 2011 has set out matters within the exclusive domain of that court. Since the court is of the same status of the High Court, it must have the jurisdiction to enforce labour rights in Article 41 and the jurisdiction to interpret the Constitution and fundamental rights and freedoms, is incidental to the exercise of jurisdiction over matters within its exclusive domain. In any matter falling within the provisions of Section 12 of the Industrial Court Act, then the Industrial Court has jurisdiction to enforce, not only Article 41 rights but also all fundamental rights ancillary and incidental to the employment and labour relations including interpretation of the Constitution within the matter before it.”

We have quoted in extenso the pertinent parts of the judgment above for the relevance attached to this appeal. In sum on this ground of jurisdiction, we find as we had stated earlier that the High Court had no jurisdiction to entertain the claim which essentially was based on breaches of contract of employment along with some unstated claims of breaches of rights, as the learned judge did find.

Believing as we do that the approach taken by Majanja J is the correct one, and in endeavouring to meet the ends of justice untrammelled by procedural technicalities, we set aside the order striking out the appellant’s petition and direct that the High Court do transfer it to the Industrial Court which also has jurisdiction and authority to consider the claims of breach of fundamental rights as pertain to industrial and labour relations matters. It is only meet and proper that the Industrial Court do exclusively entertain those matters in that context and with regard to Article 165(5)(b). And in order to do justice, in the event where the High Court, the Industrial Court or the Environment & Land Court comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar/equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time as the citizenry is well-acquainted with the appropriate forum for each kind of claim. However, parties should not file “mixed grill” causes in any court they fancy. This will only delay dispensation of justice.

In the same token we venture to put forth the position that as we have concluded that the Industrial Court can determine industrial and labour relations matters alongside claims of fundamental rights ancillary and incident to those matters, the same should go for the Environment & Land Court, when dealing with disputes involving environment and land

with any claims of breaches of fundamental rights associated with the two subjects.
(emphasis added).

19. As I adopt the clearly laid down position on the issue by the Court of Appeal, I may have nothing more useful to add other than say that under the **Rule 2** the High Court has been described as follows:

‘High Court’ means High Court of Kenya established by Article 165 of the Constitution and includes courts with the status of a High Court established under Article 162(2) of the Constitution.’

20. Having dealt with the issues of the jurisdiction of the Environment and Land Court in dealing with disputes, interpreting the Constitution and in granting appropriate remedies in respect to the matters which fall within it, I will now venture into considering whether the dispute herein falls among those contemplated to be dealt with under the Environment and Land Court.

21. However, before I do so, it is imperative to have a brief look at the history of the Petition. From the record, it is revealed that there was once a certain dispute between the Petitioner, the second Respondent and the interested Party relating to the parcels of land known as **BUTSOTSO/SHIBUYE/2798 and BUTSOTSO/SHIBEYE/227**. That dispute was referred to the Lurambi Lands Disputes Tribunal for determination. That was by the second Respondent. The said Tribunal found for the second Respondent and ordered *inter alia* that the Petitioner transfers a portion of the land known as **BUTSOTSO/SHIBEYE/227** to **BUTSOTSO/SHIBEYE/2798** so as to make the total acreage of **BUTSOTSO/SHIBEYE/2798** to be 2½ acres. That award was adopted as a judgment of the Court through Kakamega Chief Magistrate’s Court Misc. Award No. 195 of 2005.

22. As an appeal to the Western Provincial Land Disputes Appeals Committee was dismissed, the implementation of the said judgment ensued culminating with the order of the lower court made on 07/05/2015. This order was in effect implementing the judgment of that Court and is the very order that prompted the Petition.

23. Going forward, I reiterate that I have considered the material on record, the Counsel’s submissions and the authorities cited. At this point in time it is imperative to look at the meaning of the crucial words **“use, occupation and title”** as used under Article 162(2) of the Constitution.

24. **The Black’s Law Dictionary 8th Edition, 2004** define the said terms as follows:-

“Use1. The application or employment of something especially long-continued possession and employment of a thing for the purpose for which it is adopted as distinguished from a possession and employment that is merely temporary or occasional”

“Occupation” is defined as the possession, control or use of real property.

“Title” is defined as:-

(1.) The union of all elements (as ownership, possession and custody) constituting the legal rights to control and dispose of property, the legal link between a person who owns a property and the property itself ...”

I do noted that the terms “use and occupation of” were used conjunctively and not disjunctively.

25. Applying the foregone to the matter before me, I take note that the central issue touches on the ownership and title to the parcels of land in issue. It is therefore not difficult to see that the matter revolves on ownership, possession and legal rights of the Petitioner with regard to his parcel of

land. Obviously the Petitioner's contention as laid in the Petition is a clear indicator of the foregone. The matter therefore falls under Article 162(2)(b) of the Constitution and Section 13 of the Environment & Land Court. Equally the matter is for the Environment & Land Court.

26. There is also the issue of whether or not the Petition is a suit and relates to a dispute. The Petitioner holds that the Petition is neither a suit nor does it relate to a dispute but is a special proceeding seeking the declaration of rights. The Respondents hold the contrary view. A look at the Petition reveals that the Petitioner seeks a declaration, injunction, judicial review order and costs.

27. Under **Rule 2** a '**Petitioner**' is described as follows:-

"Petitioner" means any person who institutes proceedings or cross petition under these rules and for the purposes of a cross-petition includes a cross-petitioner."

Likewise a "**Respondent**" is described as:-

"Respondent" means a person who is alleged to have denied, violated or infringed, or threatened to duly, violate or infringe a right as a fundamental freedom;"

28. The existence of the two parties in a matter hence creates a situation of accusations and counter-accusations. In such a case parties are not in agreement; in other words parties are disputing some if not all the issues the remedies sought and how they approach the Court notwithstanding. That, from any perspective is simply a dispute and is what is contemplated under Article 162(2)(b) of the Constitution and Section 13 of the Act. All along the parties in this matter have been involved in a legal tussle over some parcels of land. It started before the Lands Disputes Tribunal and went to the Provincial Appeals Committee and now in this Court as a Petition. It is clear that the reason why the parties have all along litigated is that they are not in agreement on the matters at hand. They are in a dispute. I do not therefore find the argument that a Petition is not a suit and does not relate to a dispute as holding. It is hereby rejected. To just borrow a leaf from civil practice, **Section 2** of the Civil Procedure Act, Chapter 21 of the Laws of Kenya describes 'a suit' as:-

"a suit" means all civil proceedings commenced in any manner prescribed."

One of the prescribed ways is undoubtedly by Petitions.

Disposition:

29. The upshot is that I find the High Court lacks the jurisdiction to in any manner deal with this Petition and makes the following final orders:-

- a. ***The High Court lacks the jurisdiction in this matter as it falls within the Environment and Land Court;***
- b. ***This matter is hereby transferred to the Environment and Land Court for further dealing;***
- c. ***As the Environment and Land Court in this station is inactive at the moment, parties to agree on the station the matter will be transferred to;***
- d. ***Costs be in the cause.***

DELIVERED, DATED and SIGNED at KAKAMEGA this 30th day of July, 2015

A.C. MRIMA

JUDGE