



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NUMBER 178 OF 2013**

**KENYA POWER & LIGHTING COMPANY.....APPELLANT**

**VERSUS**

**NJUMBI RESIDENTS ASSOCIATION.....1<sup>ST</sup> RESPONDENT**

**LAVINGTON RESIDENTS ASSOCIATION.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

The application before the court is the Notice of Motion dated 16<sup>th</sup> October, 2013. The relevant prayers in the said application are: -

1. That the court do issue directions on the Appeal herein to enable expeditious disposal of this appeal.

2. That the Court do order the transfer of this appeal from the Civil Appeals Division to the Environmental Land Court Division for the hearing ad final determination on priority basis.

Costs.

3. By consent of court and the parties, the latter filed written submissions and rightly left the ruling to the court.

In its brief facts the Applicant/Appellant explained that this appeal arises from a Ruling of the National Environmental Tribunal delivered on 1<sup>st</sup> March, 2013. The Appellant/Applicant prepared a Memorandum of Appeal and the Appeal Record to the Ruling and sought to file it in the Registry of the Environment Land Division of this court on 2<sup>nd</sup> April, 2013. The Appellant/Applicant however states that he was turned away on an alleged basis that that Division lacked jurisdiction to register any appeals since all appeals were until then being registered in the Civil Division which alone had High Court Appeals Registry. The Applicants/Appellants were also allegedly advised that it was only the Civil Appeals Division which had jurisdiction to accept and entertain all appeals from the subordinate tribunals if they were of a civil nature, inclusive those concerning land and environment. Under the above circumstances, the Applicants/Appellants who also were constrained by the time factor to file the appeal, filed the appeal in the Civil Division.

Then in pursuant of the Appellants belief that this appeal concerning a subject touching on environment and land, ought o be adjudicated by the Environment & Land Division of the High Court, filed this application for the transfer of the appeal to the said Division. They allege lack of jurisdiction to entertain this appeal by the Civil Division.

The Respondents oppose the application and in particular, the prayer for the transfer of the appeal from this Division to the Environment & Land Division. They openly concede that this court, for the reasons given by the Applicant/Appellant, has no jurisdiction to hear and determine this appeal. They however submitted that in the said circumstances, this Civil High Court, has no jurisdiction, even to order a transfer of the suit to the Environment & Lands High Court. Its position is that this court should down its tools immediately, except to promptly dismiss the appeal with costs.

The issue before me is whether or not this court has jurisdiction to transfer the suit from one High Court to another High Court.

In my view and finding, this court has inherent residual jurisdiction to put right that which would otherwise be or amount to injustice within the meaning or power donated by Section 3A of the Civil Procedure Act, Cap 21 of the Laws of Kenya.

As Ouko J (as he then was) aptly put it: **In the matter of the Estate of George M'Mboroki, Meru HCSC No. 357 of 2004:** -

***“... the court retain certain intrinsic authority in the absence of specific or alternative remedy, a residual source of power, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular, to ensure the observance of the due process of the law, to prevent abuse of process to do justice between the parties”.***

In my view, justice simply means that the court acts in a manner or with the view of accomplishing a fair and proper administration of the law which would also mean or be in the interest of justice. As Kimaru, J put it in **Rev. Madara Evans Okanga Vs Housing Finance Company of Kenya, HCCC No. 262 of 2005:** -

***“..... the jurisdiction of the Court which is comprised within the term “inherent”, is that which enables it to fulfill itself properly and effectively, as a court of law... in sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being reserve or fund of powers, a residual source of powers which the court may draw upon as necessary whenever it is just and equitable to do so, in particular to ensure the observance of the due process of the law, to prevent improper vexation or oppression, to do justice between the parties and secure a fair trial between them.”***

The conclusion I draw from the account of the above citations is that this court, even where there are no specific provisions to do an act, has inherent and/or residual powers to act in a fair or equitable manner in the interest of justice and/or to ensure the observance of the due process of the law. Therein also lies the power for the court to act to prevent abuse of court process by a party so that fairness is maintained between the parties.

The relevant question that arises is whether such inherent or residual power of this court can authorize the court to transfer this case to the High Court which has jurisdiction?

In **Prof. Daniel Mugendi Vs Kenyatta University & Others, Civil Appeals No. 6 of 2012** the Court of Appeals stated thus: -

***“... In order to do justice in the event where the High Court, the Industrial Court or the Environmental Land Court Division 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 and equal status should in the spirit of harmonization effect the necessary transfers among themselves....”***

In accordance with the above direction the High Court exercised this inherent power and transferred cases

to the Environment Land Division notwithstanding that the cases had originally been filed in those other Divisions. Indeed this inherent power has often been exercised by the High Court which transferred cases from one High Court to another High Court. In **Rapid Kate Services Ltd Vs Freight Forwarders Kenya Limited & 2 others [2005] IKLR 292** Emukule, J stated: -

*“..... the court’s power to transfer proceedings from one court to another is a useful corrective to ensure that proceedings wherever began or whatever forum the Plaintiff had initially chosen, should be dealt with or heard or determined by the court most appropriate and suitable for those proceedings. When making or refusing an order for transfer the court will have regard to the nature and character of the proceedings and, the nature of the relief or remedy sought, the interest of the litigants and most important, the administration of justice.... It is a matter of discretion for the judge and it must be for compelling reasons which would be for the purpose of ensuring justice and this is all within the inherent powers of court under Section 3A.... whereas there is no express provision in the Civil Procedure... for the transfer of cases from one High Court to another, it does not mean that in a proper case the court cannot transfer a case before it to another registry of the High Court .....”*

The end result, without analyzing more similar exercise of this courts inherent jurisdiction, is to state that this court, exercising such jurisdiction, hereby allows this application and transfers this appeal to the Environment Land Division. Orders are made accordingly with costs in the main cause.

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**D A ONYANCHA**

**JUDGE**

Dated and delivered at Nairobi this 19th day of November, 2015.

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**L. NJUGUNA**

**JUDGE**