



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**PETITION NO. 7 OF 2012**

**SIRIKWA SQUATTERS GROUP .....**  
**PETITIONER**

**VERSUS**

**THE COMMISSIONER OF LANDS & 9 OTHERS .....**  
**RESPONDENT**

**PARTIAL RULING**

1. When preparing ruling on the petitioners Notice of Motion dated 26<sup>th</sup> October, 2015 filed in court on even date seeking that this court refers their petition to the Hon. Chief Justice for empanelment of a bench of an uneven number of judges to hear the petition under **Article 165(4)** of the **Constitution**, I came across several references by the parties to an Amended petition dated 18<sup>th</sup> December, 2012 which is not apparently on the court record. But having carefully considered the pleadings on record including the petition dated 30<sup>th</sup> July, 2012 and having heard the elaborate rival oral submissions made by counsel for the respective parties on the application, I have noted that all the issues raised by the parties in the instant petition revolve around the ownership of parcels of land known as LR No. 9606, 9607, 9608, 745, 742/2, 7739/7R, 12398, 10793 and 10794 all situated in Uasin Gishu County.
2. The Petitioners claim that they were lawfully allocated the aforesaid parcels of land on or about the year 2007 while the 7<sup>th</sup> and 8<sup>th</sup> Respondents maintain that they are the registered proprietors of the parcels of land in question having purchased the same from the 6<sup>th</sup> Respondent; that they had obtained title documents to the said land lawfully and that they are therefore entitled to the protection of the law.
3. In light of the above, it is quite evident that the key issue that will need to be determined by the court in addressing the issue of whether or not the petitioners are entitled to the reliefs sought in the petition which includes a prayer for cancellation of the titles held by the 7<sup>th</sup> and 8<sup>th</sup> Respondents is who as between the petitioners and the two respondents are the bonafide owners of the land in question.
4. In view of the foregoing and considering the provisions of **Article 162(2) (b)** and **Article 165(5) (b)** of the **Constitution of Kenya 2010**. I find that the issue of which court as between the High Court and the Environment and Land court has jurisdiction to effectively adjudicate on the matters raised by the parties arises and looms large in this petition.
5. Regrettably, this issue was not addressed by any of the parties in their lengthy submissions before the court during the hearing of the application though the petitioners had identified it as one of the substantial points of law which in their view warrants referral of their petition to the Hon. Chief Justice under **Article 165 (4)** of the constitution.

6. The law is that though the issue of jurisdiction ideally ought to be raised at the earliest opportunity, it can still be raised at any stage of the proceedings. It can be raised by the parties to the matter before the court or by the court on its own motion if the court is satisfied that the issue arises from the material placed before it. And once the issue arises, it must be resolved first before the court can take any further action in the matter in question.

As well articulated by Nyarangi JA in the celebrated case of *Owners of the Motor vessel "Lilians" V Caltex Oil (Kenya) Limited (1989) KLR*, jurisdiction is everything and without it, a court has no power to take a single step.

7. For all the foregoing reasons, I have come to the conclusion that the issue of jurisdiction needs to be determined first before this court can take any further action in this petition.

In the circumstances, I have decided to invite the parties to address me on this pertinent issue on a date to be mutually agreed upon by the parties.

In the meantime, ruling on the Notice of Motion dated 26<sup>th</sup> October, 2015 shall be held in abeyance pending determination of the issue of jurisdiction.

It is so ordered.

**C.W. GITHUA**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 18th day of December, 2015**

In the presence of:-

Miss Kirui holding brief for Mr. Arusei for the petitioner

Mr. Ondongo for the 1<sup>st</sup> – 5<sup>th</sup> Respondents

Mr. Kamau for the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents

Naomi Chonde – Court clerk