



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CIVIL APPL. NO. 41 OF 2013**

**RAELI TAPSABEI.....PLAINTIFF**

**VERSUS**

**DAVID RONO.....DEFENDANT**

**RULING ON DIRECTIONS**

Pursuant to the consent order recorded by learned counsels appearing in this matter, the ruling delivered by this court on 14th March 2014 was set aside and the Motion dated 11th November 2013 which gave rise to the aforesaid orders was restored for inter partes hearing. Before the restored Motion was fixed for inter partes hearing, learned counsels made oral submissions in which they sought for directions on the way forward in this dispute. This ruling is therefore the outcome of those submissions.

Mr. Orina, learned advocate for David Rono, the Defendant/Respondent herein urged this court to give directions on the various issues. I will however give direction on a single issue. It is a question as to whether or not the contempt proceedings should be placed before the Environment and Land court. It was pointed out that since the order alleged to have been breached arose from a land dispute, then the application for contempt should be placed before the aforesaid court. Mr. Mutai, learned advocate for Chirchir Paul Kipsang, the Personal Representative of the estate of **Raeli Tapsabei** (deceased), the Plaintiff/Applicant herein, was of the view that under the Provisions of the Judicature Act, it is only the High Court and the Court of Appeal which can hear and determine applications for contempt. I have considered the rival submissions over the issue touching on the question of jurisdiction. It is not in dispute that the substantive suit is a land dispute which was initially filed before Environment and Land Court. In fact the initial orders which were allegedly breached were issued by Lady Justice Waithaka, the Environment & Land Judge. The case was later transferred to the Chief Magistrate's court Kericho for hearing and determination. The Chief Magistrate's court thereafter issued some interim orders of injunction which were said to have been breached. The Plaintiff/Applicant has now approached this court claiming the Defendant/Respondent should be punished for breaching the orders. It is the submission of Mr. Orina that this being a land dispute, the appropriate court to deal with the matter is the Environment and Land Court. A critical examination of **Section 13** of the **Environment and Land Court Act** will reveal that the Environment and Land Court has the power to entertain contempt proceedings arising from environment and land disputes. It is therefore not right to argue that it is the preserve for the High Court and the Court of Appeal. In essence, both the High Court and the Environment and Land Courts have jurisdiction to punish for contempt. Since this court already has an Environment and Land Court in situ, the matter should be placed before the aforesaid court during this month's session. I am of the view that the other issues raised and argued before this court can competently be handled by the Environment & Land Court hence there is no need for this court to make a determination.

In the end, I direct that this file be placed before Honourable Lady Justice Waithaka on 25th June 2014 for further orders and directions.

**Dated, signed and delivered in open court this 24th day of June, 2014.**

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**J.K.SERGON**

**JUDGE**

**In the presence of:**

N/A Mr. Mutai for Plaintiff

N/A Mr. Orina for Defendant