



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL SUIT NO. 430 OF 1981**

**ESTHER NGONDU NDETI**

**ALEX KIILU NDETI**

**Being the personal representatives of**

**IDAH NDINDA NDETI ..... PLAINTIFFS**

**VERSUS**

**CECILIA SITUMAU NDETI**

**MICHAEL KYENDE NDETI**

**Being the personal representatives of**

**DR. KIVUTO NDETI ..... RESPONDENT**

**R U L I N G**

The suit herein was filed on 13<sup>th</sup> February, 1981 by Patrick Mutheka Ndeti against Dr. Kivuto Ndeti, his uncle. The claim is over Land Reference No. 7149/9 measuring 100 acres situate in Athi River Trading Centre, Machakos District which the plaintiff claims was owned by members of a family called Ndeti family, governed by the Akamba Customary Law.

The plaintiff claimed that he was entitled to 3 acres thereof and sought among others, a declaration to that effect. He also sought an injunction restraining the Principal Registrar of Titles from registering a transfer of the suit parcel or any portion thereof or subdivision thereof to the defendant. In addition, he sought a declaration that any transfer registered or lodged for registration under the provisions of the registration of Titles Act at the Lands Registry in respect of Title No. LR 7149/9 or any portion or subdivision thereof is void.

The defendant denied the claim by the plaintiff and pleaded that he was the owner of the suit parcel of land and therefore had sought vacant possession of the same from the plaintiff, considering the plaintiff a trespasser.

The dispute was referred to a panel of elders chaired by A.M. Akwabi, District officer for arbitration who heard the parties, deliberated and gave an award on 13<sup>th</sup> May 1986 restraining the sale or registration or

eviction of the plaintiff from the land until a family company, P.N. Ndeti and Brothers Ltd is dissolved and the assets shared.

The said award was forwarded to court and received on 18<sup>th</sup> July 1986 and a decree was given on 18<sup>th</sup> September 1986 in terms of the award.

The defendant sought leave to appeal and stay of execution of the said decree passed by **Hon. Mary Ang'awa** but his application dated 12<sup>th</sup> October 2006 was dismissed with costs on 12<sup>th</sup> March 2008, on the grounds among others, that the same had been brought after 20 years.

Along the way, the defendant died and a substitution was done in 2013. The plaintiff too died and was substituted and the substitutes now seek fresh orders for judgment to be entered in accordance with the elders' arbitration award dated 13<sup>th</sup> May 1986 by their application dated 4<sup>th</sup> August 2014 which is opposed.

That is the brief background to this huge, old file.

Having set out the background thereof, I now proceed to determine only one issue and that is whether this court (High Court) has the jurisdiction to entertain this matter as set out and if not, then I have no business going into the merits of the application dated 4<sup>th</sup> August 2014, as amended vide the amended chamber summons filed in court on 18<sup>th</sup> August 2014 by the firm of E.K. Mutua & Co Advocates.

From the background given, it is clear that the dispute herein relates to the use of and occupation of and title to land parcel No. 7149/9 situate in Athi River. That being the case, Article 162 (1) (2) (b) of the Constitution of Kenya, 2010 contemplates the establishment of a special superior court with the same status as the High Court with jurisdiction to hear and determine disputes of this nature as outlined above.

Furthermore, clause (3) thereof provides that Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2). It is for that reason that Parliament in 2011 enacted the Environment and Land Court Act, 2011 clothing it with jurisdiction to hear and determine land and environment related disputes as set out in Article 162 (2) (b) and Section 13 of the Environment and Land Court Act.

Besides the above Act, the Land Act 2011 and the Land Registration Act 2011 too confer jurisdiction to the Environment and Land Court Act to hear all disputes relating to environment and land as stipulated in Article 162 (2) (b) of the Constitution.

In addition, Article 165 (5) of the Constitution ousts the jurisdiction of the High Court from entertaining any disputes that are expressly preserved for the courts contemplated in Article 162 (2) (b) of the Constitution.

Albeit the High Court had jurisdiction to hear and determine the dispute herein before the promulgation of the new Constitution on 27<sup>th</sup> August, 2010 and in the transitional period pursuant to part 5 of the transitional and consequential provisions (Administration of Justice); and whereas Section 22 thereof provides that all judicial proceedings, pending before any court shall continue to be heard and shall be determined by the same court or a corresponding court established under this Constitution or as directed by the Chief Justice or the Registrar of the High Court; such continuation of pending proceedings, in my view, was meant to be the case during the transition and before the establishment and operationalization of the courts contemplated in Article 162 (2) (b).

As at now, we have the environment and land court Act 2011 which establishes the Environment and Land Court. The said court is also fully operational with the appointment of judges to preside over cases.

Consequently, the transitional provision is spent and Article 165 (5) of the Constitution is now operational, necessitating the corresponding court contemplated in Section 22 of Part 5 of the transitional

and consequential provisions being clothed with the necessary jurisdiction to hear and determine this dispute.

Accordingly, I decline to hear the notice of motion dated 4<sup>th</sup> august 2014 on merits and direct that this matter and the entire file to be placed before the Presiding Judge of the Environment and Land Court for further directions/orders as she may deem fit as to its hearing and final determination.

Orders accordingly.

R.E. ABURILI

JUDGE

10<sup>TH</sup> DECEMBER 2014