



**Kuria v Mutunga the Chief Justice of the Republic of Kenya & 2 others
(Petition 50 & 62 of 2012 & Miscellaneous Judicial Review 63 of 2012
(Consolidated)) [2012] KEHC 2870 (KLR) (Civ) (23 July 2012) (Judgment)**

*JAMES NDIRANGU KURIA v DR. WILLY MUTUNGA THE CHIEF
JUSTICE OF THE REPUBLIC OF KENYA & 2 others [2012] eKLR*

Neutral citation: [2012] KEHC 2870 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

**PETITION 50 & 62 OF 2012 & MISCELLANEOUS
JUDICIAL REVIEW 63 OF 2012 (CONSOLIDATED)**

DAS MAJANJA, J

JULY 23, 2012

BETWEEN

JAMES NDIRANGU KURIA PETITIONER

AND

**WILLY MUTUNGA THE CHIEF JUSTICE OF THE REPUBLIC OF
KENYA 1ST RESPONDENT**

JUDICIAL SERVICE COMMISSION 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

**AS CONSOLIDATED WITH
MISCELLANEOUS JUDICIAL REVIEW 63 OF 2012**

**IN THE MATTER OF
WILLY MUTUNGA THE CHIEF JUSTICE OF THE REPUBLIC OF
KENYA RESPONDENT**



JUDGMENT

1. By a petition dated 17th February 2012 the petitioner seeks the following declarations;
 - (a) An interpretation of Article 262 specifically transitional clause No. 22 under Schedule 6 of the Constitution, vis-à-vis Articles 162(2)(b), 162(3), 165(5)(b) of the Constitution and Section 30 of the Environment and Land Court Act No. 19 of 2011 in relation to the Original jurisdiction of Courts on matters and disputes relating to the environment and the use and occupation of and title to, land.
 - (b) A declaration that upon the enactment and commencement of Environment and Land Act No. 19 of 2011 transitional clause No. 22 under Schedule 6 of the Constitution ceased to be a source of original jurisdiction on matters and disputes relating to the environment and the use and occupation of, and title to, land.
 - (c) A declaration that section 30 of the Environment and Land Act No. 19 of 2011 is unconstitutional so far as it confers original jurisdiction to any other court other than the Environment and Land Court after the commencement of Act No. 19 of 2011.
 - (d) A declaration that the High Courts and Magistrates courts have no original jurisdiction to hear and determine disputes relating to the environment and the use and occupation of, and title to, land and disputes stipulated under Section 13 of the Environment and Land Court Act No. 19 of 2011 after the 30th August 2011.
 - (e) An order directing the High Court and Magistrates Courts do forthwith cease from hearing and determining disputes relating to the environment and the use and occupation of, and title to, land and disputes stipulated under Section 13 of the Environment and Land Court Act No. 19 of 2011.
 - (f) An order does issue directing the 1st and 2nd respondents to forthwith discharge their respective constitutional duties and appoint or transfer judges to the Environment and land Courts.
 - (g) An order that the respondents do pay the petitioner the costs of this petition.
2. This matter has been consolidated with Nairobi JR Misc. 63 of 2012 in which the applicant seeks leave to apply for orders of judicial review.
3. The basis of the petitioner's claim is that Article 162(2) provides that "Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to – (a) employment and Labor relations (b) the environment and the use and occupation of, and title to, land."
4. Pursuant to the authority granted in Article 162(2) (b) and (3), Parliament enacted the provision of the Environment and Land Court Act (Act No. 19 of 2011) to deal with environmental and land matters. As I understand the petitioner's case is that once the Act was passed, the court was "established" so that the High Court and any other court ceases to have jurisdiction of matters concerning land as contemplated in Article 162(2).



5. Both the Judicial Service Commission and the Attorney General oppose this petition and have drawn my attention to the decision of Kasango J. in the case of Republic v Attorney General and Others ex parte Benson Irungu Mombasa HC Misc. Civil Suit No. 3 of 2012 (Unreported) in which the applicant sought an order of mandamus to direct the Attorney General and Judicial Service Commission to constitute and operationalise the Environment and Land Court provided for under Article 162(2)(b).
6. In her decision, Justice Kasango held that the Constitution protected the right of access to justice to everyone and it was proper that in the circumstances of the case an order of mandamus be issued on the following terms;
 - (1) That an order of mandamus is hereby issued compelling and or directing the Attorney General of the Republic of Kenya, the Chief Justice of the Republic of Kenya in the Judicial Service Commission to constitute and or operationalise the Environment and Land Court Act No. 19 of 2011 pursuant to the provisions of Article 162 (2) of the Constitution of the Republic of Kenya read together with Article 165(5) of the Constitution within six months from the date of this order.
7. I am aware that the process of the judges of the Environment and Land Court is ongoing in accordance with the terms of the Constitution and the Judicial Service Act (Act No. 1 of 2011) and judges shall be appointed shortly.
8. The establishment of a court is a process and the mere enactment of legislation does not complete the process. For purposes of Article 162(2) the establishment of the court is only completed once judges are duly appointed in accordance with the Constitution. (See the case of Brookside Dairy Ltd Vs Attorney General & Another; Nairobi Petition No. 33 of 2011 at paragraph 11 in relation to the Employment and Labour Relations Court).
9. Article 165(5) provides that the High Court shall not have jurisdiction in respect of matters falling within Article 162(2). In my view and in light of what I have stated, this section only applies once the court is established and it is established once judges are appointed. Until such time, the High Court shall continue to exercise, in accordance with Article 165 (3)(a), “unlimited original jurisdiction in criminal and civil matters.”
10. In Judicial Review No. 63 of 2012, the ex-parte applicant seeks leave to lodge judicial review proceedings to quash the Practice Direction issued by the Chief Justice in Gazette Notice No. 1617 titled “Practice Directions on Proceedings relating to the Environment and the use and occupation of the title to land.”
11. These directions were necessitated by the repeal of the Land Disputes Tribunal Act (Act No. 18 of 1990) and consequent abolition of the Land Disputes Tribunals occasioned by the enactment of the Environment and Land Court Act. The practice direction is intended to guide operations of the courts pending the establishment of the Land and Environment Court. These directions are within the mandate of the Chief Justice and are intended to promote the right of access to justice under Article 38.
12. In view of the findings I have made, leave to commence judicial review proceedings is rejected. Consequently the chamber summons dated 1st March 2012 in Nairobi JR Misc. 63 of 2012 is dismissed with no order as to costs. The petition is also dismissed with no order as to costs.

DATED and DELIVERED at NAIROBI this 23rd day of July 2012

D.S. MAJANJA



JUDGES Ngonyo Munyua instructed by Ngonyo Munyua & Company Advocates for the Petitioner/
Applicant.

Mr. M. Issa instructed by Issa & Company Advocates for the 1st and 2nd Respondents.

Mr. Opondo, Litigation Counsel, instructed by the State Law Office for the 3rd Respondent.

