



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC MISC. APPL. NO. 2 OF 2018

MARY MUKHONJA.....APPLICANT

VERSUS

MAXWELL BURUDI.....1ST DEFENDANT

JOSEPH KEDIMUK.....2ND DEFENDANT

R U L I N G

1. The plaintiff brought an application dated **03/04/2018** seeking the following orders:

(1) That this application be certified as urgent and same be heard ex parte at the first instance.

(2) That this honourable court be pleased to call full Appeal No. 22 of 2009 from Nakuru Provincial Appeals to this Honourable court for hearing and disposal.

(3) That there be stay of execution in Kitale Land Case No. 75 of 2008.

(4) That there be an interim order of stay of execution in terms of prayer (3).

(5) That costs be in the cause.

2. The grounds upon which the application are based are that the 2nd respondent has moved the court for the 3 acres to be transferred to him and that there is an appeal pending before the Appeal Committee, Nakuru which should be heard first.

3. The sworn affidavit of the applicant was filed in support of the application. It is dated **3rd April, 2018**.

4. In that affidavit the applicant avers that he filed the claim before the Kwanza Land Disputes Tribunal which ruled against him whereupon he filed an appeal at the provincial land disputes Appeals Committee Nakuru. He avers that the Land Disputes Act was repealed in the year 2011 while the appeal was still pending and now the appeal can not be heard at the Committee for that reason and he asks this court to consider that it is only fair that this court calls for the file from the said appeals committee for hearing and disposal before it.

5. The 2nd respondent replied to the application through his grounds of opposition dated **23rd April, 2018** in which he deposes as follows: that the application dated 3/4/2018 is an abuse of the court process; that the applicant who is acting in collusion with the 1st respondent have done their best to obstruct execution of the decree that resulted from the judgment of the court; that the **Land Disputes Tribunal Act No. 9 of 1999** was repealed in 2011; that this honourable court has no jurisdiction to make an order to transfer the purported appeal from the Provincial Appeals Tribunal; that this honourable court has no jurisdiction to hear an appeal directed to the Provincial Appeals Tribunal since the law only gave jurisdiction to the High Court to hear appeals originating from the decision of the Appeals Tribunal; that the application is mischievous and only calculated to continue obstructing the respondent from enjoying the fruits of his judgment in **Kitale Chief Magistrate's Court Land Case No. 75 of 2008**; that the application has no merit and that the applicant's **Petition No 7 of 2014** was dismissed with costs.

6. This court ordered that the application be disposed of by way of written submissions and the applicant filed hers on the 2nd may 2018. The respondent never filed any submissions on that application.

7. In her submissions the applicant reiterates the contents of the supporting affidavit and the grounds already outlined above and relies on the case of **Christopher Wafula Mutoro Vs Richard Lordia Lokere Kitale Misc. Civil Application No 71 of 2015** in which the Eldoret Court of Appeal held that following the repeal of the **Land Disputes Tribunals Act 1990** and the establishment of the environment and

Land Court, in the absence of the Land Disputes Appeal Committee the Environment and Land Court has jurisdiction to hear and determine the appeal. The Court Of Appeal also ruled that the repeal of the Land Disputes Act did not affect its previous operations or anything done under it or affect a right, privilege, obligation or liability acquired, accrued, or incurred under it unless a contrary intention appears and that the ELC Act does not convey a contrary intention. The court found that the appellant therein had a right to pursue his right to appeal which had accrued under the repealed act before a competent court.

8. From the above it is clear that this court has jurisdiction to hear and determine the appeal that is sought to be transferred to it from the Rift Valley Province Appeals Committee. The application dated 3/4/2018 therefore has merit. I therefore grant it in terms of prayer (2) and order that there shall be a stay of execution in ***Kitale Chief Magistrate's Court Land Case No. 75 of 2008*** pending the hearing and determination of the appeal.

Dated, signed and delivered at Kitale on this 2nd day of July, 2018.

MWANGI NJOROGE

JUDGE

2/7/2018

Coram

Before: Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Munialo for Applicant

N/A for 2nd Respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

2/7/2018