



REPUBLIC OF KENYA

AT THE HIGH COURT OF KENYA AT SIAYA

CONSTITUTIONAL PETITION NO. E001 OF 2021

CORAM: HON. R.E. ABURIL J

IN THE MATTER OF ALLEGED CONTRAVENTION OF CONSTITUTIONAL RIGHTS, NEGLIGENT/CARELESS BREACH OF STATUTORY DUTY OF CARE & RESPONSIBILITY AND DEPRIVATION OF PROPERTY RIGHTS CONTRARY TO THE PRINCIPLES OF LAND POLICY & OBLIGATIONS IN RESPECT OF THE ENVIRONMENT (CHAPTER 5 OF THE CONSTITUTION OF KENYA, ARTICLE 60, 67 AND 69)

CRYSTAL CHARLOTTE BEACH RESORT.....PETITIONER

VERSUS

THE REGISTRAR OF LANDS, BONDO.....1ST RESPONDENT

NATIONAL LAND COMMISSION.....2ND RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY...3RD RESPONDENT

MINISTRY OF ENVIRONMENT & FORESTRY.....4TH RESPONDENT

COUNTY GOVERNMENT OF SIAYA.....5TH RESPONDENT

THE HON. ATTORNEY GENERAL.....6TH RESPONDENT

RULING OF THE COURT ON GIVING OF THE DIRECTIONS

1. This matter is due for directions on a Certificate of Urgency dated 29/1/2021. All parties except the 2nd Respondent have appeared through counsel and it is clear that the Respondents have not filed their responses to the Petition and the Notice of Motion. They therefore require time to file their respective responses.
2. However, this court has had to inquire into its jurisdiction in this matter and is of the view, expressed to the parties present, that the court that is vested with jurisdiction to hear and determine questions of environmental degradation, validity or otherwise, of titles issued to the Petitioner, the alleged flawed process of adjudication and titles issued to the Petitioner, is the Environment and Land Court as stipulated in Article 162(2)(b) of the Constitution.
3. Furthermore, Article 165(5)(b) of the Constitution expressly bars this court (High Court) from hearing and determining disputes that fall within the jurisdiction or purview of the courts contemplated in Article 162(2)(a) and (b) of the Constitution.
4. Section 13(1)(2) & (7) of the Environment and Land Court confers such jurisdiction on the Environment & Land Court, and the Act provides the orders that the said court can issue which orders include- compensation, declaration, judicial review (prerogative orders, general damages among others.
5. *For the above reasons, and as this matter is at its initial stage, I hereby direct that the file herein be forthwith transmitted and be placed before the Environment and Land Court, Kisumu, for further directions on the disposal of the Notice of Motion and the main Petition.*
6. *I further order that as the Petitioner has paid into court, court fees in the sum of Kshs. 63,280.00, the said court fees shall be applied towards the matter once transmitted to Kisumu ELC. This is in line with Article 48 of the Constitution which clearly provides that the State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice. In my view, calling upon the Petitioner to pay fees afresh court fees will be impeding access to justice.*

7. These proceedings and Ruling/directions to be typed forthwith and transmitted to the Deputy Registrar, Kisumu Environment and Land Court for reconstruction of the file as this court arranges to transmit the original and digital file to Kisumu ELC expeditious.

8. Mention on 10/2/2021 before Environment and Land Court Judge at Kisumu.

9. Proceedings before this court on this matter are now closed.

10. Orders accordingly.

Dated, signed and Delivered at Siaya, this 8th Day of February, 2021

R.E. ABURILI

JUDGE

In the presence of:

Mr. C.N Mutuku Advocate for the Petitioner/Applicant

Mr. Mutai Advocate for the 1st, 3rd, 4th and 6th Respondents

Ms. Maryanne Advocate for the 5th Respondent