



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**JUDICIAL REVIEW APPLICATION NO. 18 OF 2014**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE DISTRICT LAND REGISTRAR, KAKAMEGA.....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY-GENERAL.....2<sup>ND</sup> RESPONDENT**

**EX PARTE: DARIYA SHINYANZWA SHITIABAYI**

**RULING**

1. The judicial review application herein seeks the quashing of a certain decision of the Kakamega District Land Registrar and an order to have him compelled to remove a caution in the register for Isukha/Shirere/1183.

2. The first respondent is a creature of sections 12 and 13 of the Land Registration Act, No. 3 of 2012, and he exercises his mandate in accordance with the Land Registration Act.

3. Under section 101 of the Land Registration Act, disputes that arise with respect to the matters it governs are to be resolved by the Environment and Land Court. Indeed, section 2 of the said legislation defines ‘court’ for the purposes of the Land Registration Act to mean the Environment and Land Court

4. The two provisions state as follows:

“2. “Court” means the Environment and Land Court established under the Environment and Land Court Act, 2011, No. 19 of 2011 ...”

Jurisdiction of court. 101. The Environment and Land Court established by the Environment and Land Court Act, 2011 No. 19 of 2011 has jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act.”

5. That would mean that any question arising on any provision of the said legislation should be determined by the Environment and Land Court.

6. These two provisions are in line with Articles 162(2) and 165(5) of the Constitution, which provide as follows:

“162(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—

(a) ...

(b) the environment and the use and occupation of, and title to, land.

165(5) The High Court shall not have jurisdiction in respect of matters—

(a) ...

(b) falling within the jurisdiction of the courts contemplated in Article 162 (2).”

7. It should be clear from these provisions that the High Court has no jurisdiction over the matters that are in dispute in this suit. That jurisdiction is reserved for the Environment and Land Court. Accordingly, I do hereby order that the matter be transferred to the Environment and Land Court at Kakamega for final disposal. It is so ordered.

**DELIVERED DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 1<sup>st</sup> DAY OF November, 2019**

**W. MUSYOKA**

**JUDGE**