



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC APP 113 OF 2013

ESBON KIURA BEN

NJERU KAVINDI

NJERU W. WACIMBAPLAINTIFFS/APPLICANTS

MWANGI BENJAMIN

MUSA JOSEPH

TIRUS NJIRU KIRIMUI

VERSUS

CHAIRMAN GITARE PRIMARY SCHOOL

HEADTEACHER, GITARE PRIMARY SCHOOL

AGNES MUTHONI NJIRUDEFENDANTS/APPLICANTS

SAMWEL RUTERE JOSPHAT

JELIA CIUMWARI NAFTARY

JESSEE MTETU FOR GITARE SECONDARY

RULING

1. This is a ruling in respect of an application to commit the defendants to civil jail in respect of contempt of court. It is stated that they have defied a court order requiring them to remove the pit latrines from the suit plots to enable the land registrar to remark the access road separating plot numbers 199, 200, 201, 202, 203, 204 and the school itself. It is clear from the decree that the matter arises out of a land dispute between the plaintiffs and the defendants.
2. The proper forum to enforce the decree in favour of the applicants should be the Environment and Land Court. According to the Court of Appeal in *Karisaa Chengo, Jefferson Kalama Kengha & Kitsao Chao Ngati v. R (2015) eKLR* a Judge of the High Court has no jurisdiction to entertain and determine disputes in relation to land. This jurisdictional issue is derived from section 31 of the Environment and Land Court Act. In terms section 30 (1) states as follows:

30 (1) All proceedings relating to the environment or to the use and occupation and title to land pending before any court or local tribunal of competent jurisdiction shall continue to be

heard and determined by the same court until the Environment and Land Court established under this Act comes into operation or as may be directed by the Chief Justice or the Chief Registrar.

2. *The Chief Justice may, after the court is established, refer part-heard cases, where appropriate, to the court.*
3. The Environment and Land Court Act (Act No 19 of 2011) commenced on 30th August 2011. In the circumstances, this application should have been filed in the Environment and Land Court which is vested with jurisdiction entertain and determine land disputes. The reason being the Environment and Land Court has now been established and that is the proper forum to entertain and determine issues in relation to land such as the instant application. That court in terms of **Article 162 (2) (b) of the 2010 Constitution of Kenya** is a superior court which has the status of the High Court. And for this reason , this application is hereby ordered transferred to the Environment and Land Court for further directions.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **13th** day of **APRIL 2016**

In the presence of Ms Muriuki hoding brief for Mr Kamunyori for the applicants and in the absence of the defendants

Court clerk Njue.

J.M. BWONWONGA

JUDGE

13.04.16