



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

MISC.APP. NO. 6 OF 2017

JOHN KAITO LOGIEL ETAGAN.....PLAINTIFF

VERSUS

IMURO LOKOPPU.....DEFENDANT

R U L I N G

1. The application dated 7/4/2017 seeks the following orders:-

(1) That an order be issued directing *LODWAR CMCC NO. 2B of 2012* to be withdrawn for trial in the Environment & Land Court at Kitale.

(2) That the costs of this application be provided for.

2. The application is based on among others, the ground that the dispute in the lower court relates to land, and there is need to transfer the same to the Environment and Land Court for hearing and determination. It is said that the Magistrate's Courts ceased to have jurisdiction over land matters following the judgment in *Malindi High Court Petition No. 3 of 2016 – Malindi Law Society –vs- A.G. and 4 Others*.

3. However this court is aware that there at the time the application was being made there was a stay of judgment mentioned above. The Court of Appeal issued a stay of that judgment. What does a stay mean? It means that the situation that pre-existed that judgment still obtains.

4. There was therefore no good reason for the applicants to state very conclusively that the Magistrates' Courts have no jurisdiction in respect of any matters commenced before the Environment and Land Court was established under the new constitution.

5. As this ruling was being prepared the court of appeal gave its decision in *Civil Appeal Number 287 of 2016– The Law Society Of Kenya –vs- Malindi Law Society And Others* in which the main question was whether it is within the power of Parliament to confer by legislation jurisdiction on Magistrates' Courts to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.

6. In that decision, it was found that Parliament has such power, and the judgement of the High Court declaring among others, *Sections 26(3) and (4) of the ELC Act, and Sections 9 (a) and (b) of the Magistrates Court Act 2015* unconstitutional was set aside. This application is therefore, but for the observation in paragraphs 3 and 4 herein above I have made earlier, completely overtaken by events.

7. I therefore find that the application dated 7/4/2017 has no merit and the same is hereby dismissed with no orders as to costs.

Dated, signed and delivered at Kitale on this 30th day of **October, 2017.**

MWANGI NJOROGE

JUDGE

30/10/2017

Coram before Mwangi Njoroge Judge

Court Assistant – Isabellah/Picoty

Ms. Sitati for plaintiff

Ms. Mufutu holding brief for Oduor for respondent

COURT

Ruling read in open court in the presence of the counsel for the parties.

MWANGI NJOROGE

JUDGE

30/10/2017