



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**MISC. CIVIL APPL. NO. 43 OF 2015**

**CHRISTOPHER WAFULA MUTORO ..... APPLICANT**

**VERSUS**

**RICHARD LORDIA LOKERE..... RESPONDENT**

**R U L I N G**

1. The applicant filed a Notice of Motion dated 15/7/2015 in which he seeks the following reliefs:-
  - (a) **That this application be certified urgent and the same be heard ex-parte in the first instance.**
  - (b) **That this Honourable Court be pleased to call *Land Case No. 26 of 2011* being an appeal to this court for hearing and determination.**
  - (c) **That there be stay of execution in *Kitale Land Case No. 9 of 2011* pending hearing and determination of this application.**
  - (d) **That in the meantime there be an interim order of stay pending hearing and determination of this application interpartes.**
  - (e) **That costs be in the cause.**
2. This application was brought under the provisions of Section 1A, AB and 3A of the Civil Procedure Act and Section 30 of the Environment and Land Court Act No. 19 of 2011 as well as Order 51 Rule 1 of the Civil Procedure Rules. The respondent had sued the applicant before the Kwanza Land Disputes Tribunal pursuant to the provisions of the Land Disputes Tribunal Act No. 18 of 1990 (now repealed). The dispute was heard by the Tribunal which gave its verdict which verdict was adopted as the judgment of court in ***Kitale Chief Magistrates Court Land Case No. 9 of 2011***.
3. The applicant was dissatisfied with the verdict of the Tribunal. He preferred an appeal to the Provincial Appeal Committee in Nakuru. The appeal was registered as ***No. 26 of 2011***. However before the appeal could be heard, the Land Disputes Tribunal Act was repealed following the enactment and coming into force of the ***Environment and Land Court Act No. 19 of 2011***. The applicant is therefore praying for orders that the file in respect of ***Appeal No. 26 of 2011*** which is lying at the defunct Rift Vally Province in Nakuru be brought back and that he be heard on that appeal.
4. The applicant contends that the respondent is in the process of executing the decree in **Kitale**

**Chief Magistrate Land Case No. 9 of 2011** arising from the Tribunal decision and that if the execution goes on, it will prejudice him in view of his appeal which has not been prosecuted.

5. The applicant's application is opposed by the respondent through a replying affidavit sworn on 18/9/2015 and filed in court on 10/9/2015. The respondent contends that this court lacks jurisdiction to entertain this application. He further contends that the applicant has slept on his rights and that this application is belatedly brought and amounts to an abuse of the process of court. He contends that he fully paid for the land in issue and has been staying on it and that the applicant will lose nothing if the application is not allowed.
6. I have considered the applicant's application as well as the opposition to the same by the respondent. The applicant has annexed a Memorandum of Appeal to the Provincial Appeals Committee Nakuru. The appeal was received by the Appeals Committee on 5/5/2011. The applicant has indicated that it was registered as **Appeal No. 26 of 2011**. The **Environment and Land Court Act No. 19 of 2011** came into effect on **30/8/2011**. Section 31 of the said Act repealed the **Land Disputes Tribunal Act No. 18 of 1990**.
7. Section 30(1) of the Environment and Land Court Act provides as follows:-

***“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”.***
8. The Environment and Land Court Judges were appointed on **1/10/2012** and the Judges were posted to select station across the country. Kitale was one such station where a judge was posted to in **November, 2012**. The Chief Justice then issued practice directions through **Gazette Notice No. 16268 of 9/11/2012** giving guidelines on how matters like the one in issue were to be handled. One of the directions issued by the Chief Justice was that all proceedings which were pending before the magistrates court having been transferred thereto from the defunct Land Disputes Tribunals were to continue to be heard and determined by the same courts. The gazette notice mentioned hereinabove was superseded by **Gazette Notice No. 5178 of 28/7/2014** which still retained the provisions relating to matters which were pending before the defunct Tribunals which had been referred back to the Magistrate's Court.
9. It was expected that the defunct Tribunals were to send back the files before them to the magistrates courts where they originated from. It is regrettable that such files have not been sent back to the magistrates courts as anticipated. I had occasion to deal with a similar application in **Kitale High Court Misc. Application No. 23 of 2013 between Annah Kwamboka Ogaro and Nakuru Land Disputes Appeal Committee** whereby I directed that a copy of my ruling be served upon the successors of the defunct Nakuru Provincial Appeals Committee to enable them sort out all the pending files and return them to the respective magistrates courts. This was meant to save litigants the time and money for making applications like in this case. The ruling was delivered on **30/4/2013**. It is now over two years yet such applications are being made.
10. This court has jurisdiction to call for a file and the applicant's application is not an abuse of the process of court. There is need for the applicant herein to be heard on his appeal. The appeals were being handled at the then office of Provincial Commissioner Rift Valley. The successors of the said office should be able to get out the file in respect of **Appeal No. 26 of 2011** between **Christopher Wafula Mutoro and Richard Lodia Lokere**. I therefore direct that the aforesaid appeal file should be forwarded to the Chief Magistrates Court Kitale where it will be heard and disposed of in accordance with the practice directions of the Chief Justice contained in **Gazette Notice No. 5178 of 28/7/2014**.
11. I noticed from the applicant's application that the applicant had made an application for stay of

execution of the decree in ***Land Case No. 9 of 2011***. This application was dismissed. There is no appeal to this court from that ruling. It therefore follows that there can be no stay of execution of the decree arising from that case and in any case there is no prayer for stay of execution of the decree which has been made pending determination of the appeal which had been filed at the defunct Provincial Appeals Committee. Even if there was such a prayer, the same would not have succeeded as the applicant is guilty of delay and no substantial loss has been demonstrated.

It is so ordered.

Dated, signed and delivered at Kitale on this **14th** day of **October, 2015**.

**E. OBAGA**

**JUDGE**

**In the presence of Mr. Analo for M/s Munialo for Applicant.**

**Court Assistant – Winnie.**

**E. OBAGA**

**JUDGE**

**14/10/15**